

No. 12756

United States
Court of Appeals
for the Ninth Circuit.

CLARK SQUIRE, Collector of Internal Revenue,
Appellant,

vs.

STUDENTS BOOK CORPORATION,
Appellee.

Transcript of Record

Appeal from the United States District Court,
Western District of Washington,
Southern Division

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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ATTORNEYS OF RECORD

SMITH TROY, Esq.,

Attorney General, State of Washington,

LYLE L. IVERSEN, Esq.,

Assistant Attorney General, State of Washington,

FRED L. HARLOCKER, Esq.,

Assistant Attorney General, State of Washington,

Olympia, Washington,

Attorneys for Plaintiff-Appellee.

J. CHARLES DENNIS, Esq.,

United States Attorney,

GUY A. B. DOVELL, Esq.,

Assistant United States Attorney,

324 Federal Building, Tacoma, Washington,

THOMAS R. WINTER, Esq.,

Special Assistant to the Chief Counsel,

Bureau of Internal Revenue,

Seattle, Washington,

Attorneys for Defendant-Appellant.

In the District Court of the United States for the
Western District of Washington, Southern Division

No. 1226

STUDENTS BOOK CORPORATION,

Plaintiff,

vs.

CLARK SQUIRE, Collector of Internal Revenue
for the District of Washington,

Defendant.

COMPLAINT

Plaintiff alleges:

I.

This action arises under section 1340 of Title 28 of the United States Code as hereinafter more fully appears.

II.

Plaintiff is, and at all times hereinafter mentioned was, a corporation organized under the laws of the State of Washington, having its principal place of business at Pullman, Washington, and has paid its last annual license fee due the State of Washington. It is engaged principally in the business of supplying text books and student accessories to the students of the State College of Washington.

III.

Defendant is, and at all times material hereto was, United State Collector of Internal Revenue for the District of Washington, and all taxes hereinafter

mentioned were paid to defendant by plaintiff pursuant to demand therefor made by defendant.

IV.

At all times material hereto, prior to March 1, 1947, plaintiff corporation was controlled and all of its stock was owned and held by the Associated Students of the State College of Washington, a nonprofit corporation organized under the laws of the State of Washington, and at all times subsequent to March 1, 1947, all of said stock and the control of plaintiff corporation have been held by the Board of Regents of the State College of Washington, pursuant to a trust agreement between said Board of Regents and the Associated Students of the State College of Washington, whereby the principal and net earnings of the trust shall be used only in furtherance of the purposes for which the Associated Students of the State College of Washington is organized.

V.

The State College of Washington is, and at all times herein mentioned was, an educational institution owned and operated by the government of the State of Washington and administered by a Board of Regents appointed pursuant to the laws of said state. The Associated Students of the State College of Washington is, and at all times material hereto was, a nonprofit corporation having a membership composed of students currently enrolled in the State College of Washington and functioning under the authority of the Board of Regents of said College as an educational association, having for its purposes

the furthering and supplementing of the activities of said State College of Washington and has heretofore been recognized by the Commissioner of Internal Revenue of the United States as exempt from federal income taxes as an educational institution. Neither the Students Book Corporation nor the Associated Students of the State College of Washington has at any time been engaged in the carrying on of propaganda or otherwise attempting to influence legislation.

VI.

At all times material hereto all of the net earnings of the Student Book Corporation have inured to the benefit of the Associated Students of the State College of Washington or the State College of Washington, and no private individual or shareholder has at any time in the past, nor will in the future, receive any portion of the net earnings of the Students Book Corporation.

VII.

Plaintiff has heretofore paid to defendant as Collector of Internal Revenue, pursuant to demands made by defendant, the following taxes:

Year	Nature of Tax	Date Paid	Amt. Paid
1943	Corporate Income Tax	Mar. 15, 1944	\$ 4,760.48
		June 15, 1944	
		Sept. 15, 1944	
		Dec. 15, 1944	
1943	Corporate Declared Value Excess Profits Tax	Mar. 15, 1944	349.84
		June 15, 1944	
		Sept. 15, 1944	
		Dec. 15, 1944	
1943	Excess Profits Tax	Mar. 15, 1944	13,735.26
		June 15, 1944	
		Sept. 15, 1944	
		Dec. 15, 1944	

Year	Nature of Tax	Date Paid	Amt. Paid
1943	Capital Stock Tax	July 31, 1943	375.00
1944	Corporate Income Tax	Mar. 15, 1945	
		June 15, 1945	4,840.07
		Sept. 15, 1945	
		Dec. 15, 1945	
1944	Capital Stock Tax	July 31, 1944	250.00
1945	Corporate Income Tax	Mar. 15, 1946	
		June 15, 1946	5,626.31
		Sept. 15, 1946	
		Dec. 15, 1946	
1945	Capital Stock Tax	July 31, 1945	250.00
1946	Corporate Income Tax	Mar. 15, 1947	
		June 15, 1947	14,159.53
		Sept. 15, 1947	
		Dec. 15, 1947	
1947	Corporate Income Tax	Mar. 15, 1948	
		June 15, 1948	27,586.66
		Sept. 15, 1948	
		Dec. 15, 1948	
Total Payments.....			\$71,933.15

Plaintiff filed with defendant claims for refund of all taxes listed above for the years 1943, 1944 and 1945 on March 13, 1947. Plaintiff was notified of the rejection of each of said claims for refund by letter dated September 27, 1948, signed by E. J. McLarney, Deputy Commissioner of Internal Revenue. Claims for refund of the amounts shown above for the years 1946 and 1947 were filed with defendant by plaintiff in June, 1948, but plaintiff has not been advised of any action on said claims to this date.

VIII.

Plaintiff has at all times been operated exclusively for an educational purpose and all of the amounts above shown as paid by plaintiff were erroneously collected by defendant.

Wherefore, Plaintiff prays for judgment against defendant in the sum of \$71,933.15, together with plaintiff's costs and disbursements incurred herein.

/s/ SMITH TROY,

Attorney General of the
State of Washington.

/s/ LYLE L. IVERSEN,

Assistant Attorney General of the State of Washington, Attorneys for Plaintiff.

State of Washington,
County of Whitman—ss.

Jack E. Downen, being first duly sworn, says: I am president of the Students Book Corporation and am authorized to make this verification on its behalf. I have read the foregoing complaint, know the contents thereof and believe the same to be true.

/s/ JACK E. DOWNEN.

Subscribed and Sworn to before me this 29th day of March, 1949.

[Seal] /s/ C. L. HIX,

Notary Public in and for the State of Washington,
Residing at Pullman.

[Endorsed]: Filed April 7, 1949.

[Title of District Court and Cause.]

ANSWER

Defendant, Clark Squire, Collector of Internal Revenue for the District of Washington, by his attorneys, J. Charles Dennis, United States Attorney for the Western District of Washington; Harry Sager, Assistant United States Attorney for said district, and Thomas R. Winter, Special Assistant to the Chief Counsel, Bureau of Internal Revenue, for answer to the complaint of plaintiff admits, denies and alleges.

I.

Defendant admits the allegations contained in paragraph of the complaint numbered I.

II.

Defendant admits that plaintiff is a corporation organized under the laws of the State of Washington, having its principal place of business at Pullman, Washington, as alleged in paragraph of the complaint numbered II.

For lack of knowledge or information sufficient to form a belief defendant denies each and every other allegation contained in said paragraph numbered II.

Defendant alleges that the purposes for which plaintiff was formed were "to carry on a general book, stationery, sporting goods, refreshment and general mercantile business, to buy and sell real estate, to engage in a general insurance business," and that at all times material hereto plaintiff has

carried on most, if not all, of its stated purposes for organization.

III.

Defendant admits the allegations contained in paragraph of the complaint numbered III.

IV.

Defendant admits the allegations contained in paragraph of the complaint numbered IV, except that defendant specifically denies that it was at any time material hereto "controlled" either by the Associated Students of the State College of Washington, or by the Board of Regents of the State College of Washington.

Further answering, defendant alleges that plaintiff was organized and operated as a separate legal entity for its own business purposes and not for educational purposes; that plaintiff at all times material hereto was managed, operated and controlled by its own officers, trustees and stockholders. That plaintiff at no time has been an auxiliary to or an integral part of the Associated Students of the State College of Washington or of the State College of Washington.

V.

Defendant admits the allegations contained in paragraph of the complaint numbered V, except that defendant specifically denies that Associated Students of the State College of Washington functioned under the authority of the Board of Regents of State College of Washington as an educational institution.

VI.

Defendant denies the allegations contained in paragraph of the complaint numbered VI.

VII.

Defendant admits the allegations contained in paragraph of the complaint numbered VII.

VIII.

Defendant denies the allegations contained in paragraph of the complaint numbered VIII.

Wherefore, defendant prays judgment that this action be dismissed, together with costs and disbursements to defendant.

/s/ J. CHARLES DENNIS,
United States Attorney.

/s/ HARRY SAGER,
Assistant United States
Attorney.

/s/ THOMAS R. WINTER,
Special Assistant to the Chief Counsel, Bureau of
Internal Revenue.

Receipt of Copy acknowledged.

[Endorsed]: Filed July 29, 1949.

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated by and between the plaintiff, through its attorneys, Smith Troy, Attorney General for the State of Washington, and Lyle L. Iversen, Assistant Attorney General for the State of Washington, and the defendant, by and through his attorneys, J. Charles Dennis, United States Attorney for the Western District of Washington, and Thomas R. Winter, Special Assistant to the Chief Counsel, Bureau of Internal Revenue, that the following facts are admitted and may be taken and deemed by the Court at the trial of this action as established facts therein:

I.

This action arises under Sec. 1340 of Title 28, United States Code.

II.

Plaintiff is, and at all times hereinafter mentioned was a corporation organized under the laws of the State of Washington, having its principal place of business at Pullman, Washington, and has paid its last annual license fee due the State of Washington.

III.

Defendant is, and at all times material hereto was the United States Collector of Internal Revenue for the District of Washington, and all taxes hereinafter mentioned were paid to defendant by plaintiff pursuant to demand thereof made by defendant and

the same were paid by said defendant into the Treasury of the United States.

IV.

Exhibit 1, hereto attached, is a true copy of the Articles of Incorporation of the plaintiff corporation in their present amended form.

V.

Exhibit 2, hereto attached, is a true copy of the By-Laws of the plaintiff corporation in their amended form, at all times material hereto prior to November 4, 1948.

VI.

The plaintiff, Students Book Corporation, succeeded in 1923 to the Student Book Company, Inc., a corporation organized in 1914 by the Associated Students of the State College of Washington, hereinafter referred to as the A.S.S.C.W., which supplied the original capital in the sum of \$2,000. The said College of Washington is an educational institution operated by the Government of the State of Washington and is, for the most part, supported by public funds. The A.S.S.C.W. is a corporation organized under the laws of the State of Washington, and Exhibit 4, attached hereto, is a true copy of its Articles of Incorporation. Exhibit 5, attached hereto, is a true copy of the Constitution of the A.S.S.C.W.

VII.

The A.S.S.C.W. has been recognized by the Commissioner of Internal Revenue as exempt from Fed-

eral income taxes under Sec. 103(6) of the Revenue Act of 1928, and Sec. 231(6) of the Revenue Act of 1926, according to a letter from the Commissioner of Internal Revenue to the corporation dated July 14, 1930.

VIII.

The plaintiff corporation for many years has operated a store on its own property adjoining the campus of the State College of Washington. The property was purchased in 1923 and a new building was erected. The building was financed by a mortgage loan of \$22,000, and which was paid off by profits from its business in 1928. The original charter of the corporation provided for an authorized capital of \$60,000. Capital stock in the amount of \$25,000 was issued to the A.S.S.C.W. in consideration for the assets of the Student Book Company, Inc., on May 1, 1923. In 1928 the authorized capital stock was increased to \$100,000. Stock dividends were paid from time to time to the A.S.S.C.W. until March 30, 1939, at which time the capital stock outstanding reached its present total of \$77,000. During the period up to 1929 all earnings were retained in order to provide working capital and finance the purchase of equipment and expansion of the plant. Capital stock and surplus during this period were as shown in the following Table I:

"Capital Stock Issued and Surplus

Date	Description	Stock	Stock Outstanding	Surplus After Dividend
5- 1-23	Original Issue	\$25,000.00	\$25,000.00	\$9,646.12
1-28-26	Stock Dividend	20,000.00	45,000.00	1,947.22
1-15-27	Stock Dividend	10,000.00	55,000.00	1,141.76
10-31-27	Stock Dividend	1,000.00	56,000.00	141.76
6-30-28	Stock Dividend	7,000.00	63,000.00	5,102.63
3-30-29	Stock Dividend	14,000.00	77,000.00	3,643.59"

Thereafter, dividends were paid in cash to the A.S.S.C.W. as shown in Table II:

"Cash and Security Dividends Paid
Jan. 1, 1933, to Dec. 31, 1945

1933.....	\$ 442.10
1934.....	500.00
1936.....	11,550.00
1937.....	7,700.00
1940.....	9,240.00
1941.....	9,240.00
1943.....	7,700.00
1944.....	11,550.00
1945.....	46,200.00"

IX.

The dividends paid in 1933 and 1934 were earmarked in the resolution by which they were declared for specific purposes; first to finance a publication of the A.S.S.C.W. for distribution to students, and second, to finance a painting of President Emeritus E. A. Brian which was presented to the State College of Washington. With these exceptions, the Board of Trustees of the Students Book Corporation followed a dividend policy to make available funds for the building of a student union building adjacent to or on the present campus of the State College of Washington. The development of this policy started in 1929. The minutes of

the trustees' meeting of April 25, 1929, read as follows:

"Mr. Willman, store manager, suggested to the board that they give some thought to setting aside a part of each year's profit, to be invested in a fund to be used to help finance a student union building whenever such a building was constructed on this campus."

The minutes of April 14, 1937, contain the following:

"Q. Why hasn't the store distributed its earnings to the members of the student body as such earnings are made?

"A. The total outside investment made in the store is \$2,000. In 1914 the A.S.S.C.W. made this investment. If all the earnings since the store was first started had been returned to the students there would be no student store today, and it would have been impossible to continue operations with so small a capital structure. The store building, its equipment and its merchandise have now been paid for out of earnings and now earnings are being accumulated toward the building of a student union."

X.

The board of trustees declared dividends at such times as the A.S.S.C.W. asked for money to implement the program for the construction of a student union building. These dividends were transferred to the bursar (now comptroller) of the State College

of Washington who, in turn, has disbursed these funds for the purchase of lands, title to which is vested in the State College of Washington and held for student purposes in accordance with resolution adopted by the Board of Regents October 10, 1941, as follows:

“Whereas, the Associated Students of the State College of Washington have purchased the following property to provide a sufficient and suitable site for a Student Union Building for this campus and title of which rests in the name of the State of Washington:

“To Wit, That part of lot five (5) in block three (3) of Campus Park Addition to Pullman, according to plat thereof recorded in Book E of plats, page 23, records of said county, described as follows:

“Commencing at the southerly point of said lot on Thatuna Street, and running thence northeasterly along the southerly line of said lot 192 feet to an iron stake; thence at right angles to said southerly line, to the northerly line of said lot; thence southwesterly along the northerly line of said lot; to Thatuna Street, thence southeasterly along Thatuna Street to the place of beginning.

“Lot twenty-four (24) of McGee’s Subdivision of Lots one (1) and two (2) of Section five (5), township 12 North, Range forty-five (45) E.W.M. together with all that portion of lot one (1), of Section five (5), township fourteen (14) North, Range 45, E.W.M. lying south and

west of said lot twenty-four (24) as now owned by the State of Washington.

“Be It Resolved, that the Board of Regents hereby recognizes the transfer of title of the above-mentioned real estate and that of any other purchases to be made in the future for the same purpose and hereby records in its minutes that said land will be held by the State College of Washington for student purposes; and, that in the event said land is required for other College uses, either suitable other land will be made available to the A.S.S.C.W. or payment will be made to the A.S.S.C.W. in the amount of cash expenditure made in purchasing said land.

“In Witness Whereof, the Board of Regents directs that this be spread on its minutes and that the Associated Students be notified of its action.”

Funds in excess of these disbursements were invested in marketable securities pending use in construction of a student union building. All dividends paid on the stock have been received by the A.S.S.C.W. including those paid on the trustees' qualifying shares.

All receipts by the A.S.S.C.W. from the Students Book Corporation have been used solely for the following purposes:

- (1) For real estate costing \$54,804.19 to which the State of Washington has title.
- (2) For drafting and securing plans for the

proposed student union building costing \$32,068.77.

These disbursements were made to the A.S.S.C.W. by the Students Book Corporation. A detailed list of the expenditures made by the A.S.S.C.W. for which they were reimbursed is attached hereto as Exhibit 6.

XI.

Other disbursements made from these funds were in connection with the purchase of securities held by the comptroller in the students' store account, for maintenance and other operating costs connected with the renting of the property thus acquired. These costs have been charged to the fund as the rentals collected by the comptroller on this property have been deposited in the fund. Earnings which have not been paid in dividends have been retained by the Students Book Corporation to finance expansion of the store and are retained in liquid form prior to declaration of dividends to the A.S.S.C.W. The business of the Students Book Corporation is conducted primarily with the students and faculty of the State College of Washington. Approximately four per cent of the business of the store is done with persons other than those connected with the State College of Washington. The merchandise handled consists of textbooks and student supplies. The corporation has never passed a rebate to the students, faculty members or customers. A part of its stock is sold at list or current retail prices, and on certain items, such as

engineering and laboratory equipment prices, in many cases, are below list. Where the margin is so low as to require selling at list prices in order to break even, or on those lines which have a manufacturer's set list price, these items are sold at list price. The bookstore cooperates with the faculty of the college in stocking adopted textbooks, laboratory instruments and other items determined by the faculty to be necessary to students in pursuing courses of instruction.

The proposed student union building when constructed will be the property of the State of Washington.

XII.

On February 27, 1947, the A.S.S.C.W. transferred to the board of regents of the State College of Washington all of the stock of the Students Book Corporation. A trust agreement dated March 1, 1947, setting forth the conditions of the transfer was entered into by the A.S.S.C.W. and the board of regents. A true copy of the trust agreement is hereto attached as Exhibit 7. The stock has been held in accordance with that trust agreement continuously to the present date.

XIII.

During the taxable years involved in this action, the gross sales, gross profit from sales, income other than from sales, total income, salaries paid by and number of employees of Students Book Corporation were as follows:

Year	Gross Sales	Gross Profits From Sales	Income Other Than From Sales	Salaries Paid	No. of Employees
1943	\$272,605.46	\$ 77,637.50	\$ 3,876.14	\$31,359.05	80
1944	190,170.58	56,884.70	3,908.50	28,012.88	125
1945	220,797.36	63,502.99	3,382.69	31,298.03	137
1946	453,729.88	120,957.33	4,998.56	58,026.73	178
1947	741,373.68	203,513.38	16,824.94	95,407.70	371

The State College of Washington did not itself own any interest in Students Book Corporation, was not responsible for its debts, and was not entitled to any part of its earnings during any of the taxable periods involved in this action.

The Students Book Corporation, itself, does not instruct any students of the college, employed no teachers and offered no courses of study.

It is further stipulated and agreed that this case presents the following question:

Whether the Commissioner of Internal Revenue erred in refusing to allow the plaintiff corporation's claim of exemption from Federal income tax under Sec. 101(6) of the Internal Revenue Code (Title 26, U. S. C., 101(6)).

Statute Involved

Internal Revenue Code

Sec. 101. Exemptions from Tax on Corporations.

The following organizations shall be exempt from taxation under this chapter:

* * *

(6) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary,

or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

* * *

Plaintiff's Contentions

Plaintiff contends that it is entitled to exemption from federal income tax and excess profits tax under the provisions of Section 101(6) of the Internal Revenue Code because:

(1) It is a corporation organized and operated exclusively for an educational purpose, the sole object of its organization having been to act as an implementing agency to the educational activities of the State College of Washington. During all of the taxable years involved and at all other times plaintiff has actually been operated in keeping with the purpose for which it is organized, and all profits have accrued directly to the State College of Washington and its educational activities, the principal destination of its net earnings having been the acquisition of land for a student union building, title to which has vested in the State College.

(2) No part of the net earnings of plaintiff have, during any of the taxable years involved, inured to any private individual, but all of its earn-

ings have gone to the advancement of the educational activities of Washington State College.

(3) Exemption is not determined by the form of the charter of a corporation, but by the actual facts with regard to its organization and activities and the destination of its income.

Defendant's Contentions

Defendant contends that the plaintiff corporation is not entitled to exemption from Federal income tax under the provisions of Sec. 101(6) of the Internal Revenue Code, corresponding provisions of the Revenue Acts and the Regulations, because:

I.

In order to be exempt under the above-quoted section of the law, an organization must be both organized and operated exclusively for one or more of the specified purposes, and since the plaintiff corporation was organized for general business purposes, it can not be said to be organized and operated for any of the purposes specified in the statute.

II.

Neither the statute nor the regulations recognize that an organization is exempt from Federal income tax merely because its income is distributed to an exempt organization or is devoted to exempt purposes, and that neither does the ownership of the capital stock of a business corporation by an exempt organization entitle the corporation to exemption, although, through the stock ownership,

the exempt organization does, of course, exercise control over the affairs of the corporation.

It is further stipulated and agreed that the right of either party is reserved to introduce additional evidence.

/s/ SMITH TROY,

/s/ LYLE L. IVERSEN,

Attorneys for Plaintiff.

/s/ J. CHAS. DENNIS,

/s/ THOMAS R. WINTER,

Attorneys for Defendant.

[Endorsed]: Filed May 18, 1950.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above matter having regularly come on for trial before the undersigned judge sitting without a jury, the parties having entered into a stipulation as to the facts and issues herein but reserving the right to introduce further additional evidence, and testimony having been taken supplemental to such stipulation, and the matter having been fully argued; upon the basis of the stipulation and testimony, the court hereby makes the following:

Findings of Fact

I.

This action arises under Section 1340, Title 8, of the United States Code.

II.

Plaintiff is, and at all times hereinafter mentioned, was a corporation organized under the laws of the State of Washington having its principal place of business at Pullman, Washington, and has paid its last annual license fee due the State of Washington.

III.

Defendant is, and at all times material hereto was, the United States collector of internal revenue for the district of Washington and all taxes hereinafter mentioned were paid to defendant by plaintiff pursuant to demand therefor made by defendant and the same were paid by the said defendant into the treasury of the United States.

IV.

At all times since plaintiff's organization and until March 1, 1947, all of its stock was owned by Associated Students of the State College of Washington, a non-profit corporation organized under the laws of the State of Washington and at all times subsequent to March 1, 1947, all of plaintiff's stock was held by the Board of Regents of the State College of Washington pursuant to a trust agreement between said Board of Regents and the Associated Students of the State College of

Washington whereby the principal and net earnings of the trust shall be used only in furtherance of the purposes for which the Associated Students of the State College of Washington is organized. At all of said times qualifying shares were held by officers of plaintiff corporation in trust for the owner thereof.

V.

Plaintiff, Students Book Corporation, succeeded in 1923 to the Student Book Incorporated, a corporation organized in 1914 by the Associated Students of the State College of Washington hereinafter referred to as the ASSCW, which supplied the original capital in the sum of \$2,000. The State College of Washington is an educational institution operated by the government of the State of Washington and is for the most part supported by public funds. The ASSCW has been recognized by the Commissioner of Internal Revenue as exempt from federal income taxes under Section 103(6) of the Revenue Act of 1928 and Section 231 (6) of the Revenue Act of 1926 according to a letter from the Commissioner of Internal Revenue to the corporation dated July 14, 1930. Neither the Students Book Corporation nor the Associated Students of the State College of Washington has at any time been engaged in the carrying on of propaganda or otherwise attempting to influence legislation.

VI.

Plaintiff corporation for many years has operated a store on its own property adjoining the campus of the State College of Washington for the sale to students and faculty members at reasonable prices of textbooks, students' supplies and other items for the accommodation of students and faculty members. The management of the Students Book Corporation at all times works in coordination with the administration and faculty of the State College in determining items of textbooks and students' supplies to be carried in stock. In addition to its main store, plaintiff also has conducted a student restaurant on the campus of the State College in quarters furnished to plaintiff without charge by the college in a building designated the old gymnasium. Approximately four per cent of plaintiff's business is done with persons not connected with the college.

VII.

During all the taxable years involved herein by the terms of plaintiff's by-laws, all actions of its board of trustees were subject to the approval of the president of the college, and at all of said times all actions of the governing body of the ASSCW were likewise subject to the approval of the president of Washington State College.

VIII.

Dividends paid by plaintiff corporation were, from the time of its organization until March 30,

1929, paid to ASSCW in the form of stock dividends, thereafter dividends were paid in cash to the ASSCW. Dividends paid in 1933 and 1934 were earmarked in the resolution by which they were declared for specific purposes; first, to finance a publication of the ASSCW for distribution to students, and second, to finance the painting of President Emeritus E. A. Bryan, which was presented to the State College of Washington. With these exceptions the Board of Trustees of Students' Book Corporation followed the dividend policy to make available funds for the building of a student union building adjacent to or on the present campus of the State College of Washington. The Board of Trustees declared dividends at such times as the ASSCW asked for money to implement the program for the construction of a student union building, which dividends were transferred to the bursar (now comptroller) of the State College, who in turn has disbursed these funds for the purchase of lands, title to which is held in the name of the State of Washington, and for other purposes connected with the construction of the student union building. Funds in excess of those needs are held in marketable securities.

IX.

Plaintiff corporation has never passed a rebate to the students, faculty members or customers. The proposed student union building, when constructed, will be the property of the State of Washington.

X.

Plaintiff has heretofore paid the defendant as Collector of Internal Revenue pursuant to demands made by the defendant, the following taxes:

Year	Nature of Tax	Date Paid	Amt. Paid
1943	Corporate Income Tax	Mar. 15, 1944	
		June 15, 1944	\$ 4,760.48
		Sept. 15, 1944	
		Dec. 15, 1944	
1943	Corporate Declared Value Excess Profits Tax	Mar. 15, 1944	
		June 15, 1944	349.84
		Sept. 15, 1944	
		Dec. 15, 1944	
1943	Excess Profits Tax	Mar. 15, 1944	
		June 15, 1944	13,735.26
		Sept. 15, 1944	
		Dec. 15, 1944	
1943	Capital Stock Tax	July 31, 1943	375.00
1944	Corporate Income Tax	Mar. 15, 1945	
		June 15, 1945	4,840.07
		Sept. 15, 1945	
		Dec. 15, 1945	
1944	Capital Stock Tax	July 31, 1944	250.00
1945	Corporate Income Tax	Mar. 15, 1946	
		June 15, 1946	5,626.31
		Sept. 15, 1946	
		Dec. 15, 1946	
1945	Capital Stock Tax	July 31, 1945	250.00
1946	Corporate Income Tax	Mar. 15, 1947	
		June 15, 1947	14,159.53
		Sept. 15, 1947	
		Dec. 15, 1947	
1947	Corporate Income Tax	Mar. 15, 1948	
		June 15, 1948	27,586.66
		Sept. 15, 1948	
		Dec. 15, 1948	
Total Payments.....			\$71,933.15

XI.

Plaintiff filed with defendant claims for refund for all taxes listed above for the years 1943, 1944 and 1945, on March 13, 1947. Plaintiff was notified of the rejection of each of said claims for refund by letter dated September 27, 1948, signed by E. J. McLarney, Deputy Commissioner of Internal Revenue. Claims for refund of the amount shown above for the years 1946 and 1947 were filed with the defendant by plaintiff in June, 1948, but after the expiration of more than six months thereafter plaintiff had not been advised of any action upon said claims.

XII.

The activities of the plaintiff have at all times been integrated and coordinated with those of the ASSCW and the State College and plaintiff is the alter ego of the ASSCW and at all times material hereto was organized and existed for the purpose of carrying out the objectives of the ASSCW which were incident and auxiliary to the educational purpose of the State College of Washington.

From the foregoing Findings of Fact the court makes the following:

Conclusions of Law

I.

Plaintiff was during the years 1943 to 1947, inclusive, a corporation organized and operated exclusively for an educational purpose and no part of its net earnings inured to the benefit of any private individual or shareholder and no substantial

part of its activities was in carrying on propaganda or otherwise attempting to influence legislation.

II.

During the years 1943 to 1947, inclusive, plaintiff was entitled to be exempt from corporate income tax, capital stock tax, excess profits tax and corporate declared value excess profits tax.

III.

Plaintiff is entitled to recover from the defendant taxes paid for the years 1943 to 1947, inclusive, in the sum of \$71,933.15, with interest thereon at the rate of 6% per annum as provided in United States Code, Title 26, Section 3771, and plaintiff's costs and disbursements incurred herein.

Done in open court this 12th day of July, 1950.

/s/ CHARLES W. LEAVY,
U. S. District Judge.

Presented by:

/s/ FRED L. HALOCKE,
Assistant Attorney General of
the State of Washington.

[Endorsed]: Filed July 12, 1950.

In the District Court of the United States for the
Western District of Washington, Southern Division

No. 1226

STUDENTS BOOK CORPORATION,

Plaintiff,

vs.

CLARK SQUIRE, Collector of Internal Revenue
for the District of Washington,

Defendant.

JUDGMENT

The above matter having regularly come on for trial before the undersigned judge sitting without a jury, and the court having read the stipulation of the parties and heard the testimony and the arguments of counsel and having made Findings of Fact and Conclusions of Law herein, and being fully advised in the premises,

It Is Hereby Ordered, Adjudged and Decreed that plaintiff shall recover from defendant as Collector of Internal Revenue for the district of Washington \$71,933.15 with interest thereon at six per cent per annum computed upon the following basis: Interest upon \$375.00 from July 31, 1943; interest upon \$18,845.58 from December 15, 1944; interest upon \$250.00 from July 31, 1944; interest upon \$4,840.07 from December 15, 1945; interest upon \$250.00 from July 31, 1945; interest upon \$5,626.31 from December 15, 1946; interest upon \$14,159.53

from December 15, 1947; interest upon \$27,586.66 from December 15, 1948. Plaintiff shall recover its costs and disbursements herein taxed by the clerk in the sum of \$75.16.

Done in open court this 12th day of July, 1950.

/s/ CHARLES M. LEAVY,
U. S. District Judge.

Presented by:

/s/ FRED L. HALOCKE,
Assistant Attorney General of
the State of Washington.

[Endorsed]: Filed July 12, 1950.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Clark Squire, Collector of Internal Revenue for the District of Washington, defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final Judgment entered in this action on July 12, 1950.

Dated this 31st day of August, 1950.

/s/ J. CHARLES DENNIS,
United States Attorney for the Western District
of Washington.

/s/ GUY A. B. DOVELL,
Assistant United States Attorney for the Western
District of Washington.

Copy of the within Notice of Appeal mailed to Smith Troy, Attorney General, State of Washington, this 31st day of August, 1950.

/s/ E. E. REDMAYNE,
Deputy Clerk.

[Endorsed]: Filed August 31, 1950.

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO
DOCKET APPEAL

This matter coming on to be heard ex parte this date on motion of the defendant, through his attorneys, J. Charles Dennis, United States Attorney for the Western District of Washington, and Guy A. B. Dovell, Assistant United States Attorney for said district, for an order extending the time for filing the record on appeal and docketing the appeal in the United States Court of Appeals for the Ninth Circuit, to enable the defendant to procure a transcript of testimony, and other evidence offered at the trial of this case, and it appearing the defendant's notice of appeal was filed herein on August 31, 1950, and that such time may be extended to a day not more than 90 days from the date of filing said notice of appeal, and good cause appearing therefor, it is hereby

Ordered that the time for filing the record on appeal and docketing the appeal with the Appel-

late Court is hereby extended to and including the 29th day of November, 1950.

Done in Open Court this 1st day of Sept., 1950.

/s/ CHARLES H. LEAVY,
United States District Judge.

Presented by:

/s/ GUY A. B. DOVELL,
Assistant United States
Attorney.

[Endorsed]: Filed September 1, 1950.

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF
RECORD ON APPEAL

To the Clerk of the above-entitled Court:

The above-named defendant, Clark Squire, United States Collector of Internal Revenue for the District of Washington, by and through his attorneys of record, J. Charles Dennis, United States Attorney for the Western District of Washington, and Guy A. B. Dovell, Assistant United States Attorney for said district, and Thomas R. Winter, Special Assistant of the Chief Counsel, Bureau of Internal Revenue, pursuant to Rule 75(a) of Rules of Civil Procedure, as amended, hereby designates the entire and complete record in this case, including a transcript of all proceedings and evidence and

all of the original exhibits, to be contained in the record on appeal.

/s/ J. CHARLES DENNIS,
United States Attorney.

/s/ GUY A. B. DOVELL,
Assistant United States
Attorney.

/s/ THOMAS R. WINTER,
Special Assistant to the Chief Counsel, Bureau of
Internal Revenue.

Affidavit of mailing attached.

[Endorsed]: Filed November 22, 1950.

In the District Court of the United States for the
Western District of Washington, Southern Di-
vision

No. 1226.

STUDENTS BOOK CORPORATION,
Plaintiff,
vs.

CLARK SQUIRE, Collector of Internal Revenue
for the District of Washington,
Defendant.

TRANSCRIPT OF PROCEEDINGS

Before: The Honorable Charles H. Leavy,
United States District Judge.

May 18, 1950, 10:00 A.M.

Appearances:

THOMAS R. WINTER, ESQ.,

Assistant United States Attorney,

Appeared on Behalf of Defendant; and

LYLE L. IVERSEN, ESQ.,

Assistant Attorney General, State of
Washington.

Appeared on Behalf of Plaintiff.

The Court: Docket 1226, Students Book Corporation vs. Clark Squire, Collector of Internal Revenue, for trial. Are the parties ready?

Mr. Iversen: The Plaintiff is ready, your Honor.

Mr. Winters: The Defendant is ready, your Honor.

The Court: There has been submitted here what is designated as a stipulation as to facts.

Mr. Winters: Yes, your Honor.

The Court: I haven't had an opportunity, of course, to examine it because it was filed just this morning.

Mr. Winters: It is a little more than a stipulation of facts, your Honor. Paragraphs one through thirteen, your Honor—well, through thirteen down to line ten—are facts which we have stipulated are established facts in this case and may be taken as deemed to have been admitted by the Court. Then we further stipulate and agree as to the issues presented by this case on lines ten through fifteen—

about fifteen and a half on my copy—and we have set forth the Statute involved and Plaintiff has submitted its contentions on page nine and Defendant has submitted his contentions on page ten. On the last page [3*] there we further agree that either party reserves the right to introduce additional testimony.

Attached to the stipulation are copies of original documents which we have stipulated are true copies. We haven't checked them but if there is an error here and there we can bring it to the attention of the Court and have it corrected.

And, there is one exhibit attached thereto that hasn't been designated in the pre-trial stipulation and that is Exhibit 3, and we would want to explain to the Court that that is the letter from the Commissioner to the Book Store Corporation, dated November 12, 1947.

Mr. Iversen: There are several respects in which an explanation of some of these exhibits needs to be made. After the copies were made up and stipulations prepared, I discovered that there were some of these documents that—there were some matters that—I had not been aware of at the time they were made up, and so I will introduce that information by testimony, such as the fact that some of these documents were not in effect during the taxable years, and so on, but other than that, I think the stipulation carries out most of the matters before the Court.

Mr. Winter: I think all other matters have been admitted by the pleadings. Our intention wasn't to

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

make a [4] complete pre-trial order so that it would take the place of the pleadings but any controversial facts we have been able to agree upon we have set forth in the stipulation and agreed upon the issues and contentions of the parties which are set forth.

Mr. Iversen: And the record is preserved here to introduce additional testimony and evidence.

The Court: You have stipulated and are in accord on the proposition that Section 101, sub-section 6, is the only part involved?

Mr. Iversen: Yes. This case involves refund of income taxes and also refund of excess profits tax but the excess profits tax statute provides that corporations shall be exempt from that if it is exempt for income tax purposes, so that, under the statute, the determination for income tax purposes determines the capital stock and excess profits tax also.

The Court: Isn't it your contention that subdivision 14 of section 101 has any application?

Mr. Iversen: No. Section 6 is the only one we will make any contention on.

The Court: Well, why wouldn't 14 have application?

Mr. Iversen: We were not trying to establish it on that. We don't think it is that kind of a corporation. [5] It is not simply a holding company, so we haven't made any contention on 14.

The Court: Very well. Unless it should develop later, from examination, that 14——

Mr. Winter: No claim has been made. In order to obtain exemptions from income tax, a claim must be made, and no claim has been made for refund in

this suit, so that, therefore, 14 couldn't have application in this suit because the Court would have no jurisdiction to consider an application in this present suit, no claim having been made under that section and Plaintiff is asserting none.

Mr. Iversen: If the Court please, I think the contentions are very well set up in the stipulation. I don't know whether you have had a chance to read that over yet.

The Court: No; it just now came to me.

Mr. Iversen: Very generally, your Honor, here is what is involved.

The State College of Washington is, of course, a public institution of the State of Washington. At the College there is organized the Associated Students—the A.S.S.C.W

It is an exempt corporation under the income tax statutes and recognized as such by the Commissioner of Internal Revenue. [6]

The Associated Students, some years ago—about 1913 or '14—organized the Students' Book Company, a predecessor corporation of the present Plaintiff, Students Book Corporation, and they furnished the original capital for it—about two thousand dollars—and subsequently, in 1923, the new corporation was formed, the Students Book Corporation, and gave to the Associated Students, who held all the stock in the Students' Book Company, twenty-five thousand dollars worth of its stock in exchange for all of its assets in the old Students' Book Company, and it has been the owner of all the capital stock since.

The articles of incorporation of the Students Book Corporation are in the normal form of corporations under the laws of Washington.

The Associated Students are formed as a non-profit corporation under the laws of Washington.

The Associated Students has, at all times, appointed a Board of Trustees to the Students Book Corporation. That Board has consisted of some faculty and some student members and since 1933, and at all times involved in this litigation, there has been a clause in the by-laws of the Corporation that all the Minutes of the Board of Trustees of the Students Book Corporation must be submitted for approval to the President of the State College.

The Book Stores carries on the ordinary functions [7] of a students' book store. Business is principally done with students and members of the faculty of the State College. About four per cent of the business is done with outside people. The stock consists of books, students' supplies, engineer and laboratory equipment, and things of that kind and some refreshments and restaurant activities.

The stock was increased by issuance of stock dividends and an amendment to the Articles of Incorporation until at the present time the outstanding stock is seventy-seven thousand dollars.

In 1947, on March 1, 1947, the Associated Students transferred the stock to the Regents of the State College under a trust agreement by which the Regents agreed to hold the stock and to use any profits from the corporation solely for the purposes for which the A.S.S.C.W. was formed.

Now, the A.S.S.C.W. carries on the athletic activities and the dramatics——

The Court: And that is a corporation also?

Mr. Iversen: Yes, a non-profit corporation under the laws of the State of Washington and recognized as an exempt institution.

The Book Store has never paid any dividend to individuals but the dividends have been paid to the Associated Students. The first two dividends in money were [8] paid for ear-marked purposes. The resolution by which they were declared specified the use to which the money was to be put. One was for a painting of a president emeritis and another was to print a publication, "Getting Somewhere," to be issued to the students. And, subsequently the policy was established of setting aside money for building a student union building on the campus.

Dividends have been declared, as requested by the Associated Students, for this purpose. Real estate has been purchased in the value of forty-five thousand dollars, title to which has been placed in the State of Washington. The real estate has been accepted by the Regents of the State College and by resolution they recognized that this was purchased by the A.S.S.U.W.—that is the parent corporation—and held for purposes of the student union building. In addition there has been expended something like thirty-two thousand dollars for purposes of drafting plans and various preliminaries in connection with the students union building. The building has not yet been completed.

Some of this property purchased for the student

union building is not yet used for that purpose and, I think, it is rented by somebody and the profits are used for repairs to the building and some expenditures have been made in conjunction with the purchase of securities, and some [9] moneys taken in have been invested in marketable securities.

The bursar of the College—or the comptroller as he is now called—is the treasurer. The by-laws provide that all actions of its Board of Control—which which is the governing body—are subject to the approval of the President of the College.

The book store carries on a rather sizeable business.

The Court: Well, the Associated Students are the owners of the stock in the book store?

Mr. Iversen: That is right, except, that since March 1, 1947, stock has been transferred to the Board of Regents under a trust agreement by which they agree to hold the stock and to apply any proceeds for the purposes of the Associated Students. But, the Associated Students has at all times been the owner of the stock until they transferred it to the Board of Regents.

The book store board is appointed by the Associated Students and all their actions must be submitted to the President of the College for his approval.

Now, I think that, in general, is the factual set up in the case, and I would like to call a witness to supplement some of these matters.

The Court: Very well. [10]

Mr. Iversen: Do you want to make a statement now, or should I proceed?

Mr. Winter: No.

Mr. Iversen: We will call Mr. Pettibone. [11]

CARL PETTIBONE

called as a witness for and on behalf of the Plaintiff, having been first duly sworn, testified as follows:

Direct Examination

The Clerk: State your full name.

The Witness: Carl Pettibone.

The Clerk: Spell your last name.

The Witness: P-e-t-t-i-b-o-n-e.

Mr. Winter: I think you should first offer in evidence the stipulation and the exhibits attached thereto.

Mr. Iversen: Yes.

Mr. Winter: Have they been received, your Honor?

The Court: Yes. I haven't had an opportunity to read it.

Mr. Winter: It is also stipulated that Exhibit 3, while it isn't mentioned, attached to the stipulation, is a copy of a letter to the Commissioner and speaks for itself, and you make that as a joint offer?

Mr. Iversen: Yes.

The Court: There is no issue made at all concerning these various exhibits?

Mr. Iversen: No.

The Court: Of course, if there were a stipula-

(Testimony of Carl Pettibone.)

tion, there couldn't be, but this is sort of a hybrid—both a stipulation of facts and a pre-trial conference order. [12] Very well; you may proceed.

By Mr. Iversen:

Q. Mr. Pettibone, what is your position?

A. Business manager and comptroller for the State College of Washington.

Q. How long have you held that position?

A. Since—officially since—April 1, 1947.

Q. You reside at Pullman? A. Right.

Q. And prior to that time did you have an official connection with the College or any of its activities?

A. I was employed as manager of the Student Book Corporation from the first of 1932 through '46.

Q. Are you familiar with the affairs of the Student Book Corporation subsequent to 1946?

A. I have attended regularly the Board of Trustees meetings of the Student Book Corporation.

Q. Mr. Pettibone, the stipulation contains the Constitution of the Associated Students. Can you state at this time when that Constitution was adopted?

A. The Associated Students adopted a new constitution in—well, may I have, may I have the file that is in the chair—that one file there.

Q. This file? A. Right. [13]

(File handed to witness by bailiff).

A. (Continuing): In March of 1947.

(Testimony of Carl Pettibone.)

Q. That was the date that that constitution was adopted?

Mr. Winter: Is that Exhibit 5, Counsel?

Mr. Iversen: I will have to take a look here. Exhibit 5; that is right.

Mr. Winter: When did you say it was adopted?

Q. (By Mr. Iversen): You said that was adopted when?

The Court: March, 1947.

Q. (By Mr. Iversen): Now, do you have the Constitution that was in effect prior to that?

The Court: Let me interrupt now. Is this constitution that you referred to as adopted in March, 1947, subsequent to the time when the taxes were levied?

Mr. Iversen: Part of this covers the year 1947. The action involves the taxable years 1943 through 1947.

The Court: Including 1947?

Mr. Iversen: That is right.

Mr. Winter: Are they filed on the calendar year basis; I don't recall?

Mr. Iversen: Yes; 1947 was made a special claim and under our pleadings we have a review upon others and—— [14]

A. I find that the official notice of adoption of the new constitution by the A.S.S.C.W. was April 2, 1947.

Q. (By Mr. Iversen): Now, do you have the constitution that was in effect prior to April 2, 1947, and during the years——

(Testimony of Carl Pettibone.)

A. I have a portion of the "Evergreen," the student publication, dated January 13, 1947, that provides the constitution changes under consideration for revision by the student body committee. "The changes, it is presumed, will be printed in a later issue"—which was the case.

Q. Now, do you know whether or not the one that is set out there is the one that was in effect prior to the adoption of the constitution that is in evidence, Exhibit 5?

Mr. Winter: Don't you have that other constitution?

Mr. Iversen: I think he's got his book there.

Mr. Winter: If that is a copy, of course——

Mr. Iversen: I thought I would offer the copy rather than the book. If you want the book——

A. The statement is made: "The Evergreen is printing a copy of the constitution changes under consideration for revision by the student body committee. The changes will be brought before the College students in the [15] future for recommended changes. It is recommended that all students read it carefully to make worthwhile changes to meet the changing needs."

Q. (By Mr. Iversen): The question is, do you know that that is a copy of the constitution that was in effect prior to the adoption of the one adopted in the stipulation? Do you know that that is a copy of the constitution that was in effect at that time?

Mr. Winter: Well, Mr. Iversen, I think the constitution that is set forth in the stipulation as Exhibit 5 is the one adopted April 2nd, and this is the

(Testimony of Carl Pettibone.)

one previous to that. Do you have a copy in the book?

The Witness: I believe that the book contains the constitution since 1947, or parts of the constitution prior thereto.

Q. (By Mr. Iversen): Don't you have a book there showing the constitution in effect prior to April 1, 1947?

A. The A.S.S.C.W. constitution to April, 1947; yes.

Q. Now, will you open your book to that?

A. Constitution and by-laws, as amended, up to September 1, 1945, revised March, 1934, adopted April 17, 1934; so, I do have a copy of that.

Mr. Winter: Mr. Iversen, may I suggest that we [16] have no objection to offering that book and substituting a copy.

Mr. Iversen: All right.

Mr. Winter (Continuing): Of the constitution and it may be marked any number that the Court desires to give it.

Mr. Iversen: Then I will offer the book and substitute a copy.

Mr. Winter: No objection; and you will furnish me with two copies? You can take the book and prepare a copy and send the bottom copies to me. I am sure that the State of Washington will not miscopy except for human errors.

Q. (By Mr. Iversen): Mr. Pettibone, the book store by-laws, as included in the stipulation, I believe you have said, were amended in October, 1947.

(Testimony of Carl Pettibone.)

Can you just state what the fact is about the amendment to the by-laws, and I refer particularly to article 3, sections 1 and 2.

A. Well, really, at the time the Board of Regents acted in the matter of the trust agreement proposed by the Associated Students, the Regents required, or proposed, that the business manager of the College act as a trustee on the book store board. In order to accommodate one additional faculty member, it was deemed desirable to add one [17] additional student, because the A.S.S.C.W. has always maintained one more student on its book store board than there are faculty persons, so that it was recognized then, on October 15, 1947, the need for two additional persons to act on the board of trustees, increasing thereby the number from seven trustees to nine.

Q. Now, was there an amendment adopted to the by-laws at that time?

A. The amendment adopted on October 15th—section one—"The stockholders of this corporation shall be nine in number."

Q. Do you have a copy of that? Mr. Pettibone, do you have a copy of that amendment?

A. I do not.

Mr. Winter: We have no objection to your offering it and substituting a copy.

Q. (By Mr. Iversen): Didn't I give you a copy of that a while ago? They were on some small slips.

A. I don't have a copy here; but these minutes consist of section 1, section 2, and section 1 on

(Testimony of Carl Pettibone.)

another portion of the by-laws—all relating to the number of stockholders and method of appointing them.

Q. Well, they are just short; will you just read them? [18]

The Court: You mean stockholders or trustees or directors?

The Witness: The procedure has been to—on the part of the Associated Students to—appoint seven stockholders—and then, as revised, nine stockholders. The stockholders have a stockholders meeting and elect a Board of Trustees.

The Court: How do the stockholders acquire their stock?

The Witness: Each stockholder holds one share, in trust, for the Associated Students. The remaining shares of stock are directly in the name, at the present time, of the Board of Regents. Prior to April—prior to 1947—the remaining number of shares was directly in the name of the Associated Students. So that, at the present time, 761 shares are in the name of the Board of Regents and one share each in the seven stockholders who hold it in trust, at the present time, for the Board of Regents.

The Court: Well, the stock is actually owned by the Associated Students?

The Witness: It was—the stock is—actually owned by the Associated Students.

The Court: And transferred in trust to the Board of Regents?

The Witness: That is right. [19]

(Testimony of Carl Pettibone.)

The Court: And the student and faculty stockholders each have one share, transferred from time to time as that personnel changes?

The Witness: That is correct.

Mr. Iversen: I would like to offer a copy in evidence instead of the book.

The Court: You may step up there, Mr. Iversen.

(Mr. Iversen approaches witness.)

Q. (By Mr. Iversen): Now, I will ask again, do you have copies of the amendments of October, 1947? A. I have two of them.

Q. Well, the amendments to articles 1 and 2, section 3?

A. Well, this book is—sections 1 and 2 of article 3; correct.

Mr. Iversen: Will you mark these for identification?

The Clerk: As one exhibit?

Mr. Iversen: Yes.

The Clerk: Plaintiff's Exhibit 9 marked for identification.

Q. (By Mr. Iversen): I hand you Plaintiff's Exhibit 9 for identification—— [20]

The Court: Hand it through the bailiff.

Q. (By Mr. Iversen, continuing): And ask you if that is a true copy of the amendment adopted in November—or October—1947? A. It is.

Mr. Iversen: I offer in evidence the copy.

The Court: I understand there is no objection, Mr. Winter?

(Testimony of Carl Pettibone.)

Mr. Winter: I just want to be sure. I would like to ask a question.

The Court: Very well.

Mr. Winter: Those are—what did you say they are? What are the papers?

The Witness: Pardon?

Mr. Winter: The exhibit you are referring to.

The Witness: These are amendments to the by-laws of the Student Book Corporation.

Mr. Winter: They are amendments to the by-laws of the Student Book Corporation? When were they enacted?

The Witness: October 15, 1947.

Mr. Winter: By whose action?

The Witness: By action of the—by action of the stockholders of the Students Book Corporation.

Mr. Winter: Was it at a stockholders meeting that day? [21]

The Witness: It was at a stockholders meeting.

Mr. Winter: And the by-laws were enacted on that date? There is no doubt about it?

The Witness: Pardon?

Mr. Winter: We have no objection, your Honor.

The Court: They may be admitted.

(Plaintiff's Exhibit Number 9 for identification admitted in evidence.)

Mr. Winter: May we have copies?

Mr. Iversen: Yes; I will prepare copies.

Q. (By Mr. Iversen): Mr. Pettibone, in addition to the activities carried on at the book store

(Testimony of Carl Pettibone.)

itself, merchandising during the faculty years involved, 1943 through 1947, did they also carry on an activity at another place other than at the book store itself?

A. Well, the book store has continuously, during the time it was—during the time it has been the Student Book Corporation has—maintained a text book, general student supply and restaurant business. The pressure of returning war veterans made it imperative that some shift be made to accommodate the volume of customers and at the original suggestion of one of the staff and the admission officer of the College, the Book Store was offered the opportunity to consider going into—moving the restaurant [22] to the old gymnasium on the College campus. Subsequently such a move was approved and the book store has, since midnight—well since late 1946—operated a restaurant in the old gymnasium on the campus. The arrangement under which it operates is that the Board of Regents has—the State College provides the rent free building insofar as the Students Book Corporation is concerned.

Mr. Winter: Is this a matter of an exchange between the Association and a matter of needing authorization?

Mr. Iversen: No.

The Court: You may go ahead.

A. (Continuing): Well, it has operated a restaurant in the gym since about August, 1946.

(Testimony of Carl Pettibone.)

Q. (By Mr. Iversen): Under what circumstances did they obtain use of the building?

A. There has never been a formal agreement. That is, a formal document to indicate any permanent working relationship but the Book Store has provided—has been provided—free the gymnasium until such time as it is expected that the new Student Union building is completed.

Q. During the taxable years, or 1943 through 1947, has the comptroller or the bursar of the College exercised any function in connection with the book store? [23]

A. If I may use the word comptroller as meaning bursar; or comptroller as business manager, or comptroller.

Q. Explain that.

A. Well, we had a new college president effective January 1, 1946. At that time—prior to that time—the principal business official was known as the bursar. Subsequently the title was changed to comptroller and once again, subsequently and after that, the title was changed to business manager and comptroller. However, it is one office in any event. But, the comptroller then has, since 1933, held the bond—the fidelity or surety bond—of the employees who are bonded in the Students Book Corporation by reason of a practical requirement on the part of the president of the Institution that there be an insured protection insofar as book store funds were concerned in the Students Book Corporation. Since early in 1947 the comptroller has sat as a member of

(Testimony of Carl Pettibone.)

the Board of Trustees of the Student Book Corporation.

Q. You spoke of the requirement of the president of the College. Well, state what you mean by the requirement of the president.

A. Well, in 1933 there was action taken by the Associated Students with regard to the Students Book Corporation which resulted in the then president of the State College, E. O. Holland, making a statement to the effect— [24] well, I have a letter here which states his interest in—

Q. Well, will you produce the letter?

A. Well, I have a May 30th letter, 1933, addressed to Ivar Putnam, president of the Board of Trustees of the Student Book Corporation. May I read it?

Q. Go ahead.

Mr. Winter: We will object to it as being self-serving.

The Court: Yes.

Mr. Winter: And not the best evidence.

Mr. Iversen: Let me see the letter.

Mr. Winter: The witness is not here, apparently, who wrote the letter.

Mr. Iversen: Let me lay—

Mr. Winter: And it is not binding on the United States and he wouldn't have authority to make such demands. It is a question of what the articles or by-laws provide.

Mr. Iversen: Will you mark this?

The Clerk: Plaintiff's Exhibit 10 marked.

(Testimony of Carl Pettibone.)

Mr. Iversen: Let me lay a foundation for the introduction of the letter.

The Court: Show it to Mr. Winter.

(Document shown to Mr. Winter.)

Q. (By Mr. Iversen): Mr. Pettibone, I have Plaintiff's Exhibit 10 and [25] ask you how that came into your possession?

A. Well, it is a letter which was addressed by the then president of the State College to one of the members of the book store board who transferred it to me as manager of the store at that time.

Q. And in whose files has it been kept?

A. It has been kept in the book store files, or in my file, since its original—since approximately the time of its original—receipt by the book store.

Q. Did you have any connection with the book store at the time; May 30, 1933?

A. I was manager of the store.

Q. Do you personally know of the fact that this has been in those files since that time?

A. Yes.

Mr. Iversen: I am going to offer in evidence Plaintiff's Exhibit 10; your Honor. This is the letter from the president of the college requesting—

Mr. Winter: The College is not a part of this action.

The Court: Well, you just make an objection and they can offer it.

Mr. Iversen: All right; I have already made it.

(Testimony of Carl Pettibone.)

Mr. Winter: Well; we object to it on the grounds that it is not binding on the United States. We [26] have no objection to the Court's receiving it for what it is worth.

The Court: Well, the objection will be overruled and an exception allowed. I might state my reason for allowing this to go in evidence, although it is probably somewhat remote, is that it may be relevant in establishing the close relationship between what is recognized as without question or doubt a State institution free from all tax by the Federal Government.

Mr. Winter: I might say that I toned down my objection considerably after I read the letter. I was a little premature but I don't think it hurts or helps us.

The Court: It will be admitted.

(Plaintiff's Exhibit Number 10 for identification received in evidence.)

Mr. Iversen: The letter reads:

The Court: I don't think you need to read it; it will be marked admitted.

Q. (By Mr. Iversen): Mr. Pettibone——

Mr. Winter: We would like to withdraw it for the purpose of making a copy.

The Court: Oh, you will have a chance to make a copy. [27]

Q. (By Mr. Iversen): Mr. Pettibone, what action was taken as a result of the letter?

A. Well, the action taken consisted of two or

(Testimony of Carl Pettibone.)

three prompt meetings of the book store board to consider the problem of handling the request that the president of the College made and it was handled as evidenced by a later communication to the satisfaction of the president and of the Board of Regents.

Q. Do you have a later communication?

A. Yes.

Q. Who was that from and to whom was it addressed? I might say, at first how was it handled? What was done?

A. The thing that was done, the book store board agreed to provide the president, promptly, with minutes of each of its meetings for his approval. The point—one point—worked out with him was that in the case of a delay which might harm the book store business, a time limit was established beyond which approval was considered as having been given.

Q. Now, what is this other communication that you refer to?

A. A communication dated June 5, 1933, which acknowledges receipt of minutes of the book store meeting which considered the problem brought up originally by President [28] Holland and which, as I said, indicates his agreement that the change, as proposed, satisfactorily meets the requirement that he referred to in his original letter. The one——

Q. Go ahead.

A. The one point not covered in any communication—either of these two communications—and that goes back to where the start was—is that the bonds

(Testimony of Carl Pettibone.)

of the employees were then placed in the hands of the bursar or comptroller of the State College.

Mr. Iversen: Will you mark this?

The Clerk: Plaintiff's Exhibit 11 marked for identification.

The Court: These fidelity bonds, Mr. Pettibone, that you referred to, of the various employees ran in favor of whom?

The Witness: Of the Students Book Store Corporation.

Mr. Iversen: I offer in evidence Plaintiff's Identification on Number 11.

Mr. Winter: We object to it. It is incompetent, irrelevant and immaterial and the issues are not involved in this case.

The Court: Does it make reference to the Exhibit just admitted?

Mr. Winter: Yes; your Honor. [29]

Mr. Iversen: This is the answer to the Exhibit.

The Court: The objection will be overruled, and it may be admitted.

(Plaintiff's Exhibit Number 11 for identification admitted in evidence.)

Q. (By Mr. Iversen): Mr. Pettibone, the arrangement worked out of submitting the minutes to the president, has that action been employed subsequent to its adoption in 1933?

A. It has been strictly complied with—or was strictly complied with—for the period that I was manager of the store. Since I have been in the

(Testimony of Carl Pettibone.)

administrative office I have seen several of the minutes which have been forwarded to the administrative office by the present manager. I can not say that I can state that every one of the minutes were forwarded to that office by the present manager of the store; but, the present manager of the store is here and would have to testify on that.

Q. The stipulation that is in here does not include by-laws of the A.S.S.C.W. Do they have by-laws and do you have a copy of the by-laws? Do you have the by-laws?

A. I do have a copy of the by-laws as adopted April 2, 1947.

Q. Do you have a copy that is available for introduction without putting in the book? [30]

A. Well, it is elsewhere than here if I do.

Mr. Iversen: If I could speak to the witness off the record.

Q. (By Mr. Iversen): I think the by-laws are in that same set of papers as the constitution that you referred to.

A. This would be the by-laws prior to the change on April 2, 1947.

Q. All right. Now, do you have a copy of the by-laws subsequent to the change in 1947?

A. I do have the original; no, Mr. Attorney, I do not find a copy of the original.

Q. Do you have a copy that you know is correct?

A. No. I say I do have the original.

Mr. Winter: I suggest you offer the original and substitute a copy.

(Testimony of Carl Pettibone.)

Mr. Iversen: All right; I will offer the book.

Mr. Winter: No objection.

The Court: Very well; it will be admitted.

Mr. Iversen: And later to substitute a copy.

The Court: And a copy may be substituted.

The Clerk: Plaintiff's Exhibit 12 marked and admitted.

(Plaintiff's Exhibit Number 12 marked for identification and admitted in evidence.) [31]

The Court: Do you have a copy?

Mr. Iversen: I would like to use this and offer a copy later. It is a student publication but it does have the by-laws and constitution. Then until we can copy it, your Honor can look at that.

I believe that is all; you may examine.

Cross-Examination

By Mr. Winter:

Q. Mr. Pettibone, I understand you became the manager of the Student Book Corporation in 1933?

A. In 1932.

Q. 1932? A. Right.

Q. What was your business before that time?

A. I was a college student from 1923 to 1927, employed in the book store.

Q. What was the nature of your employment?

A. Clerk, fountain boy, cook.

Q. And you became manager after you graduated; and did you work there after your graduation?

(Testimony of Carl Pettibone.)

A. From 1927 through 1931 I was employed by the book store.

Q. How many employees did they have about that time; do you recall?

A. I couldn't provide figures. I mean, honest recollection. [32]

Q. And you were manager until?

A. April 1, 1947. No, through—I was actually—I carried the title through that period. The last three months I was actually on detached duty with the State College.

Q. In 1947 they had 301 employees; is that right?

A. Well, I can't state that from direct and immediate knowledge.

Q. How many employees—strike that. When did you open—or when did the corporation open, the restaurant in the gymnasium?

A. In August, 1946.

Q. Did they use part time employees in that operation?

A. Many, many part time employees.

Q. They employed students?

A. A very many students are employed.

Q. Do they employ anyone from the downtown area?

A. Well, I can't—I believe that is something that the present manager of the store could answer.

Q. During the time you were manager?

A. During the time I was manager, I would say, with the exception of the cooks and the manager of the restaurant, perhaps three or four full

(Testimony of Carl Pettibone.)

time waitresses and the rest [33] were students on part time employ.

Q. Who handled the hiring and firing of the employees; the manager?

A. The manager of the book store has at all times been responsible for the hiring and firing. In actual practice it has always worked out where a department manager, such as the restaurant manager, would hire subject to the approval of the manager of the book store.

Q. How many departments do you have in the book store corporation?

A. It is actually considered as being the test book department, the supply department, and the restaurant department in terms of three specific accounting breakdowns.

Q. Did you carry a substantial stock of candies and confectionaries?

A. Candies and confectionaries are always carried by the book store.

Q. Do you carry all kinds of stationery supplies and guests—guest—supplies?

A. The store has a guest assortment.

Q. About what inventory—about what would be the value of your inventory—in 1947? Do you have any idea? You had on exhibit—or the stipulation, paragraph H had—gross sales, \$471,373. Do you recall approximately what [34] your inventory was that you carried?

A. No; I don't recall. Was the inventory infor-

(Testimony of Carl Pettibone.)

mation made available to you? We can get the information.

Q. Do you have the inventories? A. Yes.

Q. I show you what has been handed to me as——

Mr. Winter: Mark it for identification first, will you, please?

The Clerk: As defendant's Exhibit?

Mr. Winter: Yes.

A Spectator: I have another copy here.

Mr. Winter: Well, we can substitute a copy later.

The Clerk: Both as one exhibit?

Mr. Winter: Yes; that would be all right.

The Clerk: Defendant's Exhibit A-1 marked for identification.

Mr. Winter: Rather than taking the time, Counsel, we will offer Defendant's Exhibit A-1, which appears to be the balance sheet of the Student Book Store Corporation, from 1929. We are only interested up until and through the years involved.

Mr. Iversen: I have no objection.

Mr. Winter: And showing the net sales by departments. I think it might be helpful to the Court in this [35] matter.

The Court: And copies may be substituted for them.

The Clerk: Are they admitted?

The Court: They will be admitted.

The Clerk: Defendant's Exhibit A-1 admitted in evidence.

(Testimony of Carl Pettibone.)

(Defendant's Exhibit Number A-1 for identification admitted in evidence.)

By Mr. Winter:

Q. Where is the main book store located with reference to Pullman? Is it off the campus?

A. At the time it was built it was on the edge of the campus. The State College now owns land all the way around it. Its location is across the street from the girls' dormitory and, in another direction, across the street from the College Station Branch Post Office.

Q. The Student Book Corporation owns the building?

A. The Student Book Corporation owns the building and the land.

Q. And bought the building and the land from the earnings of the corporation?

A. That is right.

Q. Do people from—is it available for people downtown, other than students, to make purchases there? [36]

A. It is available to any purchaser, with relatively few taking advantage of it.

Q. But it is available. Are there students from other schools that come there and purchase? Particularly public schools? A. They may.

Q. They do as a matter of fact. You figure about four per cent of your sales are from other than students? A. That is an estimate.

Q. Do any—does anyone from, other than students, come up there to the restaurant?

(Testimony of Carl Pettibone.)

A. With the exception of faculty and students; very, very few.

Q. Visitors that might be visiting take advantage of it? They are not students?

A. That is right.

Q. If I was a student there and my parents came to visit me, I could take them there for meals?

A. Right.

Q. If I wanted to go there and make any sort of a purchase for guests, I could go into the book store?

A. You could.

Q. And, in other words, the store is open to the general public?

A. That is correct. [37]

Q. And no restrictions whatsoever on any purchase there? Would I get the same price that the students would get?

A. You would buy at identical prices.

Q. And if you were selling any articles below cost I would get them below cost?

A. You would.

Q. Do you sell some things below cost?

A. Yes, sir. I beg your pardon. Below list?

Q. No; I said below cost.

A. Only as they occasionally find themselves in the position of having to do so.

Q. It is your intention to make a profit on the merchandise?

A. That is the——

Q. What is your usual profit on the mark up? Do you have a fixed mark up on supplies?

A. No. It would be quite a flexible mark up with the mark up considerably less on the essential supplies than on the non-essential and, in the case

(Testimony of Carl Pettibone.)

of text books there is a fairly fixed mark up which actually results from the purchaser price schedule and discount schedule.

Q. And if I set up a book store right up next to it I could go into competition with your company?

A. That is right. [38]

Q. And I could make the same purchases of the same textbooks from the same people?

A. You would be able to purchase substantially most of the same items that the book store does with the limitations that the manufacturers might place on their retail outlets.

Q. In other words, any manufacturer has a right to limit the number of stores selling his merchandise and if you were there first he might deny me the right to sell it? Outside of your arrangements with the College, there was no connection between the College, so far as the business end of the business was concerned, was there? So far as the business end, outside of your stock ownership, the corporation was operated the same as any other corporation, wasn't it, by the manager? Do you understand what I mean?

A. Well, what you are saying is that it has been operated as though it had complete freedom of operation. The answer is no.

Q. You say it has not been operated as such?

A. No. It has been strictly a part of a college operation in the sense that it has been free to go ahead and do as it might wish in matters such as price and policy.

Q. Of course, the college could break its back

(Testimony of Carl Pettibone.)

if it wanted to, couldn't it, because of the nature of the operation? [39]

A. The college doesn't break the back of its operating units. It can cancel a school of social work, which it did do, and in the same way it could cancel the book store.

Q. I see. But does the manager—do you have free rein as to what purchases you should make?

A. Well, I don't believe any manager—I know while I was there I certainly worked completely closely with the Board of Trustees as well as the potential customers, and the best customers are the faculty in the final analysis because they determine what sales should be to the students.

Q. Is it contemplated that the restaurant will be moved to the Union building, which is under construction or is going to be built?

A. The restaurant will be moved into the Union building and arrangements have been made for the tearing down of the structure it is in at present.

Q. Do you make a profit on the restaurant?

A. No, sir.

Q. You haven't made a profit on the restaurant?

A. Well, as a general statement, it is true that the restaurant has never been profitable.

Q. Have you tried to make a profit on it?

A. For several years, at least, the answer is no. For example, coffee at the present time is five cents a cup. [40] You might be able to think in terms of making it five cents, or ten cents rather, as it is

(Testimony of Carl Pettibone.)

elsewhere in town. If we were seeking and striving for profit, coffee would be ten cents a cup.

Q. Well, you attempt to make a profit on your restaurant, don't you? A. No, sir.

Q. Do you expect to make it up otherwise?

A. The books and supply department have been absorbing the loss from the restaurant.

Q. I see. Does the corporation have any contractual arrangement with the College or with the A.S.S.C.W. for water for its restaurant in the Union building?

A. Well, when the Union building is completed and the restaurant moves in, the restaurant becomes a part of the Union operation as distinguished from the book store operation.

Q. As distinguished from the book store operation? A. Right.

Q. Do you have a book store in any other place except at the one location; downtown or anywhere?

A. No; those are the two locations.

Mr. Winter: I think that is all.

The Court: Mr. Pettibone——

The Witness: Yes? [41]

The Court: When this Union building is completed—I think the stipulation referred to it as a three hundred thousand dollar structure—it will be erected upon lands that the State of Washington now owns or which has title to?

The Witness: Well, the story of the land is interesting.

The Court: I don't care to go into details.

(Testimony of Carl Pettibone.)

The Witness: Well, it will be on State College property, correct.

The Court: And the building itself will be owned by whom?

The Witness: By the State College.

The Court: By the State College of Washington?

The Witness: Right.

The Court: And the net profits of this operation that you have had from year to year, have any part of them gone into this proposed plan or construction of the Union building?

The Witness: They have gone in through the dividends to the Associated Students, with Associated Students ear marking the funds for the Student Union purposes.

The Court: And for what other purposes have the net profits been used? [42]

The Witness: Well, to the best of my knowledge the Associated Students has used all of the dividend moneys expended, with the exception of the two earlier ones that Mr. Iversen made reference to, for plans and for lands and something in connection with the new Union building. And the fact is, the Union building structure only, the original structure, will cost two and a quarter million.

The Court: I may be confused, I thought the figures three hundred thousand dollars was in here somewhere.

The Witness: I don't recall a three hundred thousand dollar figure, or how it could be used here.

(Testimony of Carl Pettibone.)

The Court: Well, that is not so very material. Now, in stocking the merchandise, particularly in reference to laboratory supplies and stationery and text books and matters of that kind, did the company, when you were manager, have a free hand to stock anything he desired or was he directed in any way by the faculty?

The Witness: There was a very close working relationship between the manager and the member of the faculty in all those items which were used in class rooms. That is, student essentials, and that obviously goes on through the text book picture where there must be a very close working relationship if the store is to function as it [43] should.

The Court: Well, was there any endeavor to stock generally the merchandise such as a dealer would who was not on the campus?

The Witness: Well, there are many items carried by the store which are not essentials. The guest items and, in the case of stationery, only the buying habits of a college crowd dictate what stationery should be purchased, so that, in the non-essential items, the book store manager, under the supervision of the book store board, has exercised just a good merchants judgment.

The Court: Well, would that became a major factor in the sales, that portion that you designate as non-essentials?

The Witness: It is a very important part of sales. I can't give you any percentages. The text book volume is the book volume. The essential

(Testimony of Carl Pettibone.)

student supply volume is most substantial, but the students themselves actually recognize that the non-essential items are stocked for two principal reasons: One is that the students appreciate the nearness of the availability of the items; and the other they do seem to recognize is that any profits that are earned on the relatively higher mark up items will end up in the long run in the operation of, or the construction of, the new Union. [44]

The Court: Would you have been free, when you were manager of this store, to branch out into other lines of activity, such as agricultural implements and drug business, let us say, and general merchandising in clothing and shoes?

The Witness: No; the Board of Trustees would not have tolerated it and, if the point were stretched to the place where the Board of Trustees might tolerate it, I believe it would be stopped there because the president would stop it.

The Court: You mean you would have been restrained by reason of controls, either direct or indirect, by the college or members identified with the college?

The Witness: Yes.

The Court: I think that is all.

Q. (By Mr. Winter): You wouldn't have been restrained in the amount of candy you would buy for the students, would you? A. No, sir.

Q. Or any items which would be—which you might be—able to sell and make a profit on, would you?

(Testimony of Carl Pettibone.)

A. Well, you would still be restricted on the turn-over of all the items.

Q. Oh, sure, because of the location and where the book store was situated and who your customers were. That [45] is what you were limited by, wasn't it?

A. No.

Q. Chesterfield cigarettes is an item you will sell as many as you have customers to buy. If you thought a talking doll would be a big item to sell, to the students, you would be at liberty to sell that?

A. Well, there is a place where it would obviously stop, though.

Q. Yes; but you weren't limited by the items that a book store could sell?

A. No. If the University had no objection to a talking doll, we would stock a talking doll.

Q. And rug items, you were more or less of a book and drug store, weren't you, without the drugs?

A. Well——

Q. Cosmetics, for example?

A. Those items—those items the book store doesn't carry in the sense of the normal drug store. The perfumes and the drug items, they have a fifteen cent line to accommodate the kids.

Q. Something that would sell; that is what you were in business for?

A. But if the Board of Directors said, let's put in a good line, in terms of what you said, that is one thing; but, I don't believe the book store will ever stock that [46] type of thing, although I think that particular line would be a good selling line.

(Testimony of Carl Pettibone.)

Q. What about sporting goods; do you sell any sporting goods?

A. Well, the primary emphasis is on the necessary equipment. Beyond that, I would say relatively little.

Q. Well, you were interested in a quick turn over, weren't you?

A. Well, not in—in certain lines perhaps but not straight across the board.

Mr. Winter: That is all.

Mr. Iversen: I have no further questions.

The Court: I wanted to ask you this, Mr. Pettibone, by reason of the long years that you were with this activity, you became more or less familiar with similar activities in other parts of the United States and with other educational institutions, both private institutions and public institutions, of higher learning?

The Witness: Not at all with private institutions, but rather well with, particularly the West Coast, publishing institutions.

The Court: Well, were they engaged likewise in somewhat similar activities?

The Witness: The pattern on the West Coast, in the larger institutions, insofar as products handled is [47] about the same.

The Court: That is, in the Universities of Washington and Oregon?

The Witness: Yes, the pattern, in terms of operating unit differs. Variations all the way from the University of California where it is operated as a

(Testimony of Carl Pettibone.)

department of Associated Students to a distinct entity as the University of Washington and Washington College.

The Court: Are you familiar with the Stanford operation?

The Witness: Yes, the Stanford operation was a distinct and entirely outside business in terms of the mechanics in the way it was set up, as distinguished once again from California where it is meshed right into the Associated Students in that case.

The Court: That is all.

(Witness excused.)

Mr. Iversen: That is all of our witnesses for the Plaintiff and the Plaintiff rests.

Mr. Winter: The defendant rests, your Honor.

The Court: Well, I, of course, want to go over this stipulation quite carefully and check back on this evidence and these exhibits, but I think I will give you an opportunity to present such argument as you have and then this afternoon I can determine whether I shall make a disposition [48] of the case summarily or whether I should take it under advisement.

Mr. Iversen: If the Court please, I have a trial memorandum.

(Whereupon, argument was made by Counsel for Plaintiff.)

The Court: The situation that we have before

us, is there any fee levied upon enrolling students that is used in any way?

Mr. Iversen: I think in the Associated Students there is a fee but not in the Book Store. There is no charge so far as the book store is concerned. I believe there are dues payable to the Associated Students.

The Court: And is payment of those dues a prerequisite of being a customer of the book store?

Mr. Iversen: No. As a matter of fact, anybody can go into the book store and buy something. Actually, all but four per cent of the business is done with students and faculty, but there is no membership arrangement so far as the book store itself is concerned.

(Whereupon, further argument was made by Counsel for Plaintiff.)

The Court: I think we will suspend now until two o'clock. Court will be at recess until two o'clock.

(Whereupon, at 12:00 o'clock, noon, a recess was [49] had until 2:00 o'clock, p.m., May 18, 1950, at which time the following proceedings were had, to wit.)

The Court: All right, Mr. Iversen.

(Whereupon, further argument was made by Counsel for Plaintiff.)

(Whereupon, argument was made by Counsel for Defendant.)

The Court: Do you have anything further, Mr. Iversen?

(Whereupon, further argument was made by Counsel for Plaintiff.)

The Court: I think I am prepared at this time to make a disposition of this case.

At first blush it seems to be an extremely complicated matter, but that is more or less true of all these Internal Revenue cases. It is extremely difficult, if not impossible, to find as a precedent some case where the facts are on all fours with the one being given consideration at the moment. And I am not surprised, that with the diligence of counsel on both sides as well as some research done by the Court and my law clerk, that we haven't been able to find anything that falls squarely in with the facts as they are in the instant case.

The question of interpretation of the statute becomes a matter of significance and importance and I think [50] it would be agreed upon by both sides that interpretation of a set of facts such as we have here is required to be liberal rather than strict, and I shall keep that rule in mind in making a disposition of this case.

The action is to recover taxes paid under protest, including excess profits tax and corporate income taxes and capital stock tax too, I think, though it is a small item for the years 1943, 1944 or 1945, 1946 and 1947.

The stipulated facts fairly cover the evidence in this controversy, but the oral testimony and the

documents offered—identified and offered while Mr. Pettibone was testifying—have a tendency to clarify these stipulated facts and make less difficult to determine findings by the Court.

The law, insofar as it applies here, is this section 101, sub-division 6, of the Internal Revenue Code. I should have that citation. 26 U.S.C.A. And it provides that “corporations organized and operated exclusively . . .”—and I shall omit except as it applies here—“for educational purposes, no part of the net earnings of which accrue to the benefit of a private share holder or individual . . .”—and omitting—“would be exempt.”

I shall omit the part not in issue.

And we have to determine, from the whole facts here, whether the corporation—the book store—was [51] organized and operated exclusively for educational purposes; and, further, that its earnings—and they have been substantial throughout the later years—did not accrue to a private individual.

On the latter proposition there isn't any dispute. None of the earnings of the book store have, nor even could under its set up—accrued to the benefit of a private owner. All of its earnings, whether they had to go that way or not, have gone to a tax exempt corporation, and that is why this morning I asked if you had in mind, I think it was, sub-division 11 that dealt with tax exemptions on income. Is that 11?
14?

(Law Clerk nods affirmatively.)

The Court: Because, at the time that I was

giving consideration to this I didn't have the benefit of the agreed statement of facts before me.

But, it is very clear, so far as the facts go, and the Court has no hesitancy in making the finding, that none of this money that was earned has ever gone to a private individual or gone to a profit making corporation.

The question then, first, that we have to consider, it seems to me, is: Is this corporation one that by liberal construction a Court can find to be an educational corporation; and I use the term "liberal" advisedly.

If there were no State College in Pullman, [52] then, certainly, the activities of this corporation would have nothing to do with education.

But, the history of its creation and its activities would seem to indicate that it came into being solely for the purpose of furthering the activities of the College itself and that it has continued to be so operated.

Preceding the corporate structure here involved, the Students Book Store, we have the corporation structure of the Associated Students. As disclosed by the evidence here the Commissioner quite wisely found that that was an activity of an educational type and character and there is no profit from it that could accrue to any private individual. It was the Associated Students then, and through their activities and by the use of their accumulations which were small in amounts back in 1923, I think was the year, that the incorporation of the book store took place.

Now, the articles of incorporation, we will say, were drafted, by whoever drew them, following the formal language of a commercial corporation. But, there isn't even the remotest reference that it was ever intended that this corporation could engage in commercial activities not identified with the College. And the facts are unequivocal that all of its activities of a commercial nature were identified with the College, excepting the four per cent which were incidental sales to the great volume of sales [53] throughout the years.

I asked the question of counsel for the Commissioner as to what his view would be, if the Associated Students, without the organization of this corporate structure, had engaged in the various activities that the book store had been doing, in references to taxes. Maybe the Court was a little bit unfair in asking that question without giving counsel an opportunity to carefully weigh and consider it. At any rate, I am in full accord with his answer, that there would have been no liability.

Now then, I go just one step beyond that and, from the evidence here, attempt to ascertain just what this corporate structure is—the Book Store—and, again from the stipulated facts plus the documentary evidence—find it is nothing more or less than the alter ego of the Associated Students in this general activity. And the Associated Students, at least since 1947, are nothing more or less than a conduit through which the earnings of the Book Store Corporation will pass to the State College, an exempt institution. In fact, an institution created, I

think, by the Constitution of Washington itself which provides for a land grant.

Well, with such findings of fact—and I bear in mind fully this Stanford case because it comes more nearly to being on all fours than any of the numerous cases that have been cited or been examined—with such findings of [54] fact—I can not do other than find that the Plaintiff is here entitled to be placed in an exempt status and to recover from the Commissioner in this case.

In interrogating counsel on one side or the other side, I made reference to the dissenting opinion in the Stanford case. Judge Healy, still on the bench and probably one of the outstanding judges on the Court of Appeals in the United States Ninth Circuit, found that from the facts there exemption should be allowed to the book store. Of course, I can't accept that as the law. I am not like the Commissioner. I don't feel that I have the right to fly in the face of precedent by the Appellate Court, so I must accept as law the opinion of the majority of that court. But, they make this distinction—the majority of the court do—and it is a marked distinction: That there were earnings that directly passed back to the various individuals who furnished the original capital by which it could operate. When a profit was shown, they received repayments. Here the moneys are paid to the Associated Students by virtue of the regulations and make up a part of its fund and can never be paid back to any of the students nor any individual and,

in the whole set up, they ultimately inure to the College itself.

Then, in addition to what I have said, it is a fact, and has been since the year that Dr. Holland [55] wrote that letter—and I have forgotten whether that was 1933 or 1934——

Mr. Iversen: 1933.

The Court: ——and, whether he had a right to demand a power of veto, which was the equivalent of a control, or not, it was granted to him at that time and since that time the College has—the Regents and the College through the President have had—a control of the entire situation, of how the funds should be handled and what the policy should be in conduct of this business.

I would like for you to prepare fairly complete findings of fact in this case, Mr. Iversen, and submit them to Mr. Winter. And, I want to say in this case, as I do in so many others, that I am perfectly happy to see the Commissioner test the wisdom or lack of wisdom and judgment or lack of good judgment on the part of the trial court by taking the case to an Appellate Court.

I am not advising further litigation but I appreciate the importance of this as dealing with a somewhat similar institution in every larger educational institution in America and, if I am in error, that can be corrected. If I am not in error and Congress thinks that it is an unfair exemption, they can correct it by legislative enactment.

I think that is all. [56]

(Statement by Counsel for Defendant.)

The Court: Well, if there is nothing further, this Court will be adjourned until 10:00 o'clock tomorrow morning.

(Whereupon, at 3:10 o'clock p.m., May 18, 1950, hearing in the within-entitled cause was adjourned.)

Certificate

I, Earl V. Halvorson, official court reporter for the within-entitled court, hereby certify that the foregoing is a true and correct transcript of matters therein set forth.

/s/ EARL V. HALVORSON.

[Endorsed]: Filed November 21, 1950.

PLAINTIFF'S EXHIBIT No. 1

“Students Book Corporation

“Pullman, Washington

“Articles of Incorporation

“Know All Men by These Presents, That we, the undersigned, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of Washington, and we hereby certify:

“First. That the name of said company is The Students Book Corporation.

“Second. That the purposes for which it is formed are to carry on a general book, stationery,

sporting goods, refreshment and a general mercantile business, to buy and sell real estate, to engage in a general insurance business.

“Third. That the place where its principal place of business is to be transacted shall be at Pullman, in the County of Whitman, State of Washington.

“Fourth. That the term for which it is to exist is Fifty years from and after the date of its incorporation.

“Article 5

“Articles of Incorporation amended ‘That the number of trustees shall be seven.’ Minutes of the Board of Trustees, November 30, 1927.

Names	Residence
“E. C. Colpitts.....	Pullman, Washington
“L. Meeker	Pullman, Washington
“M. Dunning.....	Pullman, Washington
“M. K. Snyder.....	Pullman, Washington
“F. A. Weller.....	Pullman, Washington

“Article 6

“Articles of Incorporation amended. Board of Trustees minutes, January 25, 1928. ‘The authorized capital stock be increased to \$1,000,000.00.’

“In Witness Whereof, We have hereunto set our hands and seals this 21st day of February, 1923.

“E. C. COLPITTS,

“L. MEEKER,

“M. DUNNING,

“M. K. SNYDER,

“F. A. WELLER.

“State of Washington,
“County of Whitman—ss.

“On this 21st day of February, 1923, before me, M. S. Jamar, a Notary Public, in and for the State of Washington, personally appeared E. C. Colpitts, M. Dunning, M. D. Snyder, and F. A. Weller, personally known to me to be the individuals whose names are subscribed to the within instrument, and they each duly acknowledged to me that they executed the same for the uses and purposes therein mentioned.

“Given under my hand and official seal this 21st day of February, 1923.

“M. S. JAMAR,
“Notary Public in and for the State of Washington, Residing at Pullman, Wash.”

PLAINTIFF'S EXHIBIT No. 2

“By-Laws of the Students Book Corporation

“(Adopted April 18, 1923)

“Article 1 (Name and Object)

“Section 1. The name of this corporation shall be The Students Book Corporation.

“Section 2. The purposes for which it is formed are to carry on a general book, stationery, sporting goods, refreshment, and a general mercantile business, to buy and sell real estate, to engage in a general insurance business.

“Article II. (Stock)

“Section 1. The capital stock of said corporation shall be \$60,000.00 divided into 600 shares of the par value of \$100.00 each. (Incr. to \$100,000 in 1928.)

“Section 2. Amended. Dividends shall be declared from the surplus profits of the Corporation at such times as the Board of Trustees shall direct, and no dividends shall be declared that will impair the capital of the Corporation.

“(Amended December 16, 1936.)

“Article III. (Stockholders)

“Section 1. Amended.

The stockholders of this corporation shall be seven in number. All stockholders shall be appointed by the president of the Associated Students of the State College of Washington with the approval of the Board of Control of said body. Each stockholder so appointed shall hold one share of stock. The Associated Students of the State College of Washington shall hold all but seven shares of the total stock subscribed for and paid up. Each stockholder shall have one and only one vote irrespective of number of shares held.

“(Amended May 4, 1933.)

“Section 2. Amended.

Two of the stockholders shall be members of the faculty of the State College of Washington, teaching in some department of the College in Pullman,

four of the stockholders shall be undergraduate students enrolled in at least twelve collegiate hours. The four undergraduate students stockholders shall be appointed from among the three upper classes; in such manner that there shall be a representative from each class, Sophomore, Junior, and Senior. The seventh stockholder shall be the Graduate Manager. Provided that no other member of the Board of Control of the Associated Students except the Graduate Manager shall be a stockholder in this corporation.

“(Amended October 19, 1927.)

“Article IV. (Trustees)

“Section 1. Amended. October 15, 1947.

The governing board of this corporation shall be a Board of Trustees nine in number, elected by the stockholders at their regular annual meeting in October.

“Section 2. The officers of this corporation shall be elected by the Board of Trustees.

“Section 3. The trustees shall be elected annually and shall hold office until their successors are elected and qualified.

“Section 5. The Board of Trustees shall have power to employ such persons as may be necessary in the conduct of the business of the corporation and fix their compensation. The Board of Trustees shall employ a manager for the conducting of the business of the corporation, fix compensa-

tion of said manager, and require him to furnish a bond at the discretion of the Board.

“Article V (Officers)

“Section 1. The officers of this corporation shall be a President, Vice-President, Secretary, and Treasurer-Auditor.

“Section 2. The officers shall be elected annually by the Trustees at their annual meeting.

“Section 3. Duties of Officers.

a. The President shall preside at all meetings of the Board of Trustees, and shall transact such duties as shall become incumbent on the office.

b. The Vice-President shall act in the absence of the President.

c. The Secretary shall keep the minutes of all meetings, certify the same, be custodian of the seal of the corporation, and affix said seal to such documents as require the same, to take charge of the records of the corporation, conduct correspondence of the corporation and perform other such duties as the Board of Trustees shall from time to time direct. It being understood that the minute book, corporation seal, stock record, and all other records of the corporation shall be kept in the vaults of the corporation.

“Section 3. -c- Amended—(by the addition of the following) The Secretary shall promptly submit

to the president of the college for approval all minutes of actions of the Board of Trustees and of the Board of Stockholders. Unless notice of disapproval is furnished within ten days after said minutes have been delivered to the president of his secretary approval shall be considered given.

“(Amended September 21, 1933.)

d. The Treasurer-Auditor shall have charge of the financial affairs of the corporation and shall audit the books of the manager and secretary annually or at any other time that the Board of Trustees may direct.

“Article VI (Meetings)

“Section 1. The regular annual meeting of the stockholders shall be held on the third Wednesday of October of each year at 4:30 p.m. in the office of the corporation.

“Section 2. The Trustees shall hold their annual meeting on the third Wednesday of October of each year at 4:30 p.m. in the office of the corporation. The day and time of the regular monthly meetings of the Board of Trustees shall be fixed at the regular annual meetings. Special meetings of the Board of Trustees or the Stockholders may be called at any time at the discretion of the President of the Board or on demand of two members.

“Section 3. The President and Secretary of the Board of Trustees shall act as Chairman and Secretary, respectively of all meetings of the stockholders.

“Article VII (Amendments)

“Section 1. These bylaws may be amended at any regular meeting of Stockholders or at any special meeting called for that purpose. A majority vote of the Stockholders shall be necessary to pass an amendment.”

PLAINTIFF'S EXHIBIT No. 3

Treasury Department

Washington 25

Office of Commissioner
of Internal Revenue

Nov. 12, 1947

Address Reply to

Commissioner of Internal Revenue

And Refer to

IT:P:ER

RD

Students Book Corporation,

1000 Thatuna Street,

Pullman, Washington.

Gentlemen:

Reference is made to the evidence submitted for use in reconsidering your status for Federal income tax purposes.

On March 9, 1928, you were held to be entitled to exemption from Federal income tax under the provisions of section 231 (6) of the Revenue Act of 1926 and the corresponding provisions of prior revenue acts and on August 6, 1935, the previous

ruling was reversed and you were held not to be entitled to exemption under section 101(6) or 101 (14) of the Revenue Act of 1934 and the corresponding provisions of prior revenue acts. You now claim exemption under sections 101(6) and 116 of the Internal Revenue Code.

The evidence shows that you were incorporated under the laws of the State of Washington in 1923. Your purposes, as stated in your articles of incorporation, are "to carry on a general book, stationery, sporting goods, refreshment and a general mercantile business, to buy and sell real estate, to engage in a general insurance business." Your outstanding capital stock consisting of 770 shares, excepting single qualifying shares, was owned and held until March 1, 1947, by the Associated Students of the State College of Washington, an organization which has been held to be exempt from Federal income tax. The Associated Students acquired \$25,000.00 of this stock in return for assets which you acquired at the time of your incorporation and \$52,000.00 as stock dividends.

You conduct a store at which supplies, books and other merchandise are sold to the students of the State College of Washington, at reasonable prices, and services are provided without charge or at nominal cost to students of the State College of Washington. Your earnings in excess of amounts needed for working capital and expansion purposes, have been distributed as dividends to the Associated Students of the State College of Washington. During the years 1926 to 1929, inclusive, dividends were paid in stock while in 1933 and some years subse-

quent thereto cash and security dividends have been paid. During 1933 and 1934 the dividends were paid for specific purposes, that is, to finance first a publication of the Associated Students for distribution to students and second, a painting of President Emeritus E. A. Bryan which was presented to the State College of Washington. Other than those two instances, the policy has been followed of making available funds for the building of a Student Union Building, adjacent to or on the present campus of the State College of Washington. It is stated that in executing the policy dividends have been declared at such times as the Associated Students have requested money to implement the program for the construction of the Student Union Building; that these dividends have been transferred to the Bursar of the State College who in turn has disbursed the funds for the purchase of lands, title to which is vested in the State College and held for student purposes; and that funds in excess of these disbursements have been invested in marketable securities pending use in construction of a Student Union Building.

On March 1, 1947, under a trust agreement your outstanding stock was turned over by the Associated Students of the State College of Washington in trust to the Board of Regents of the State College of Washington. The agreement provides that the principal and net earnings of the trust fund are to be used only in furtherance of the purposes for which the Associated Students was organized.

Your bylaws, as amended, provide that you shall be governed by a board of seven trustees elected by

your stockholders who, in turn, shall be members of the Associated Students of the State College of Washington appointed by the president of that organization with the approval of its Board of Control, each stockholder to hold one share of your stock and to be entitled to one vote. The bylaws further provide that your stockholders shall be two members of the faculty of the State College of Washington, four undergraduate students and your Graduate Manager who may also be a member of the Board of Control of the Associated Students.

Section 101(6) of the Internal Revenue Code provides for the exemption of:

“Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation.”

Prior revenue acts carry similar provisions.

In order to be exempt under the above-quoted section of law, an organization must be both organized and operated exclusively for one or more of the specified purposes. The Bureau does not now recognize that an organization is exempt from Federal income tax merely because its income is distributed to an exempt organization or is devoted to exempt

purposes. Neither does the ownership of the capital stock of a business corporation by an exempt organization entitle the corporation to exemption although through the stock ownership the exempt organization does, of course, exercise control over the affairs of the corporation.

In view of the foregoing, and since you are organized for general business purposes, it is the opinion of this office that you cannot be said to be organized and operated exclusively for any of the purposes specified in the section of the law quoted above. It is held, therefore, that you are not entitled to exemption from Federal income tax under the provisions of Section 101 (6) of the Internal Revenue Code and the corresponding provisions of prior revenue acts. Furthermore, there is no other provision of law under which you may be held exempt. Accordingly, you are required to file Federal income tax returns on Form 1120.

Bureau ruling of August 6, 1935, is hereby affirmed.

Your case has been reviewed by the Chief Counsel for the Bureau who concurs in the conclusion reached.

Your status for capital stock tax purposes will be made the subject of a separate communication.

The collector of internal revenue for your district is being advised of this action.

Very truly yours,

/s/ GEO. J. SCHOMMAN,
Commissioner.

PLAINTIFF'S EXHIBIT No. 4

Articles of Incorporation of Associated Students of
the State College of Washington
Know All Men by These Presents:

That we, citizens of the State of Washington, and residents of Pullman, County of Whitman, and State of Washington, and being members of the unincorporated association known as the Associated Students of the State College of Washington, desire to incorporate ourselves under the provisions of the law of the State of Washington entitled "An act to provide for the Incorporation of Associations for sociable, charitable and educational purposes" approved March 21st, 1895, do hereby agree and certify as follows, to wit:

I.

The name of the corporation shall be "Associated Students of the State of Washington."

II.

The purposes and objects for which this corporation is formed are as follows:

1. To promote, manage, control and encourage all kinds of field and athletic sports, and promote and encourage the sport, pleasure, exercise and reaction of its members: to arrange, promote, manage, and control athletic contests, and for this purpose to purchase, hold, acquire, buy, sell, lease, mortgage and hypothecate both real and personal property, to erect buildings or other structures necessary and proper for the purposes before mentioned; to construct, equip and maintain a student hospital on the

campus of the State College of Washington for the use and benefit of the students at said College, to erect, equip and maintain Student Union buildings, to edit and publish such publications as may be deemed necessary for the advancement, information and education of students at said College. To borrow and loan money and do all and any of the things which may be requisite, necessary and proper in and about the carrying out of the purposes and objects hereinbefore mentioned.

2. To promote and encourage education and culture among the members of this corporation and to this end to promote and encourage literary efforts of every kind, name and nature and description. To manage, promote and conduct educational and literary contests among the members of this corporation and between this corporation and other like bodies in this state and in other states and territories and any foreign countries.

3. To promote and encourage scientific study and investigation in all the sciences and to this end to promote and encourage contests and exhibitions among the members of this corporation and between the members of other like bodies in this and all other states and territories.

4. To promote and encourage musical education and entertainments and to this end to promote and encourage musical entertainment and performances among the members of this corporation and other like bodies in this state and any other state and territory.

5. To promote and encourage debating and oratory and to promote, manage, and encourage any and all kinds of student activities of the State College of Washington and to this end to have power and authority to do any and all things which are necessary and convenient or incident thereto.

6. To make, execute and enter into contracts of every kind and character with individuals, firms, associations and corporations, private, public and municipal and bodies politic and with the Government of the United States and with any state or territory or colony or district thereof and with any foreign country.

7. To do each and everything necessary, suitable or proper for the accomplishment of any of the purposes or the attainment of any one or more of the objects herein enumerated or which shall at any time appear expedient for the protection or benefit of its members either as holders of or interested in any property, and it being the intention that the objects and purposes herein specified shall in no wise be limited or restricted by reference to or inference from the terms of any other clause of this or any other paragraph of this instrument, but that the objects, purposes and powers specified in each of the clauses of this second paragraph shall be regarded as individuals objects and powers.

8. This corporation may hold real and personal estate and may hire, purchase or erect suitable building for its accommodation to be devoted to the purposes set forth in this agreement of association,

and may receive and hold in trust or otherwise sums received by gifts, or bequests to be devoted by it to such purposes and for the purpose of the corporation shall have power to issue its promissory notes, bonds or other obligations to be secured by mortgage upon its real estate and other property in such manner as may be provided by its by-laws.

III.

This corporation shall be located at the State College of Washington, in the City of Pullman, in the County of Whitman, State of Washington.

IV.

This corporation shall not have any capital stock.

V.

The time of the existence of this corporation shall be fifty years from the date of its incorporation unless sooner dissolved according to law.

VI.

All matters or things in any way pertaining to the affairs of this corporation wherein it has not been otherwise herein provided shall be subject to the regulation and control of the By-Laws adopted by the members of this corporation.

VII.

All registered students who have paid the students annual fees and the Graduate Manager shall be members of this corporation.

In Witness Whereof, we have hereunto set our hands in triplicate this 22nd day of June, 1928.

/s/ ERWIN D. McDOWELL,

/s/ AGNES DRISCOLL,

/s/ VIRGINIA PHIPPS,

/s/ R. H. KILLIAN,

/s/ EARL V. FOSTER.

State of Washington,
County of Whtiman—ss.

This certifies that on this 22nd day of June, 1928, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Erwin D. McDowell, Agnes Driscoll, Virginia Phipps, R. H. Killian, and Carl V. Foster, to me known to be the individuals described in who executed the foregoing instrument, acknowledged to me that they signed the same freely and voluntarily for the uses and purposes therein mentioned.

In Witness Whereof I have hereunto set my hand and notarial seal the day and year first above written.

/s/ THOMAS WEILL,

Notary Public in and for the State of Washington,
Residing at Pullman.

No. 66148

Articles of Incorporation
of the
Associated Students of the
State College of Washington

Place of business Pullman

Time of existence 50 years

Capital Stock, \$ None

State of Washington, ss.

Filed for record in the office of the Secretary of State July 10, 1928, at 2:01 o'clock p.m. Recorded in Book 152, Page 290-291, Domestic Corporations.

/s/ FRANK HINKLE,

Secretary of State.

Filed at request of Thomas Neill, Lawyer, Pullman, Washington.

Filing and recording fee, \$7.45.

License to June 30, 19. . . . , \$ Exempt.

Certificate mailed Oct. 20, 1928, to above address.

Indexed.

Compared.

Certificate

This certifies that we the undersigned, subscribers to the attached Agreement of Association, held our first meeting on June 30th, 1928, at 7 o'clock p.m. pursuant to notice given to us seven days prior thereto.

That at said meeting by-laws were adopted, and we were elected trustees and officers of said associa-

tion to hold office until the first meeting of the members to be held on the first Tuesday of October, 1928.

That Erwin D. McDowell was elected president, Robert H. Killian vice president and Agnes Driscoll secretary.

That the attached is true triplicate copy of the Agreement of Association with the names of the subscribers thereto.

/s/ ERWIN D. McDOWELL,
President and Trustee.

/s/ AGNES DRISCOLL,
Secretary and Trustee.

/s/ R. H. KILLIAN, Trustee.

/s/ VIRGINIA PHIPPS,
Trustee.

/s/ EARL V. FOSTER,
Trustee.

Subscribed and sworn to before me this 30th day of June, 1928.

/s/ THOMAS NEILL,
Notary Public, Residing at
Pullman, Washington.

PLAINTIFF'S EXHIBIT No. 5

“ASSCW Constitution

“Preamble to the Constitution

“We, the Associated Students of the State College of Washington, in order to bring about in students an appreciation and understanding of democratic

values and processes through participation in student government; to develop in the student a realization of his rights, responsibilities, and his common interest with the rest of the College community; to provide practical training for all students in citizenship activities; to present and interpret student attitudes and opinions to the teaching faculty and the College Administration; to provide through student publications a means of keeping students fully informed on matters of vital concern to them, of developing group consciousness and college community morale, and of providing a medium for free expression of student opinion; and to provide the opportunity to experiment in student activity fields which provide informal educational values to all students and which cannot be financed by the College Administration have established this Constitution.

“Article I—Name

“Section 1: The name of this organization shall be the ‘Associated Students of The State College of Washington.’

“Article II—Authorities and Powers

“Section 1: This association is established under the authority of the Board of Regents of The State College of Washington and the exercise of its functions shall be subject to such conditions and limitations as the Board of Regents may from time to time prescribe.

“Section 2: Authorities and powers of the Associated Students of The State College of Washington shall be exercised by the Board of Control or by its

agents or agencies established under the Constitution.

“Section 3: Action of the Board of Control shall be subject to the approval of the President of the State College and disapproval may be appealed by the Board of Control to the Board of Regents.

“Article III—Membership

“Section 1: All regularly enrolled undergraduate students and students of short courses of The State College of Washington who pay the fees as determined by the Board of Control with the approval of the Board of Regents and who abide by the Constitution and By-laws of this association shall have full membership rights in the Association.

“Section 2: Associate membership shall be granted to regularly enrolled graduate students upon payment of regular dues. Such membership shall grant the holder to all privileges or regular membership except the right to vote and hold office in the Association.

“Article IV—Officers

“Section 1: The executive officers of this Association shall be a President, a Vice-President, and a Secretary. They shall hold office for one year. The Comptroller of the State College shall be ex-officio treasurer.

“Section 2: To be eligible for election to an executive office a student must have senior standing

at the beginning of the fall term as determined by the office of the Registrar and must have at least a 2.00 grade average for the number of credit hours in which he has been enrolled in this institution.

“Section 3: The powers and duties of the officers of this Association shall be as follows:

(a) The President shall preside at all meetings of this Association and the Board of Control. He shall inspect and sign all documents of the Associated Students as required by law or as directed by the Board of Control, and perform all other duties pertaining to that office.

(b) The Vice-President shall assume and execute all the duties of the President in the absence or inability of that officer, and he shall automatically be chairman of the Election Board. In case the office of President is at any time vacated, the Vice-President shall automatically become President for the unexpired term, and the Board of Control shall appoint a new Vice-President.

(c) The Secretary shall keep a written record of all meetings of the Associated Students and the Board of Control, and shall notify all members of meetings of the Board of Control. He shall perform such additional duties as assigned to him by the Board of Control.

“Article V—Board of Control

“Section 1: The Board of Trustees of this Association shall be known as the ‘Board of Control of the Associated Students.’

“Section 2: The following shall be voting members of the Board of Control:

(1) the President, Vice-President, and Secretary of the Association;

(2) one Senior Independent men's representative and one Senior Fraternity men's representative;

(3) one Senior Independent women's representative and one Senior Fraternity women's representative;

(4) one Junior Independent men's representative and one Junior Fraternity men's representative;

(5) one Junior Independent women's representative and one Junior Fraternity women's representative;

(6) one Sophomore Independent representative and one Sophomore Fraternity representative.

“Section 3: To be eligible for the above offices students shall have proper class standing at the beginning of the fall term as determined by the office of the Registrar and must have a 2.00 grade average for the number of credit hours in which they have been enrolled in this institution.

“Section 4: The following shall be non-voting members of the Board of Control:

(1) the President of the Associated Women Students;

(2) a student representative of the Athletic Council selected by the Athletic Council;

(3) the Editor of the Evergreen;

(4) an Administrative Advisor.

“Section 5: The Board of Control may select three additional non-voting members from the College staff.

“Section 6: Powers and duties of the Board of Control shall be to:

(1) adopt or approve all budgets of the Association with annual review of salaries of all ASSCW administrative staff and all salaried appointive and elective student body positions;

(2) authorize an audit by a disinterested certified public accountant, the faculty or the alumni, of all ASSCW records at the close of each fiscal year; a copy of the audit shall be given to (a) the office of the Comptroller, (b) the Board of Control, (c) the Evergreen, in which a summary statement shall be published;

(3) establish all policies and have general supervision of all affairs, property, and activities of the Association;

(4) have charge of the disbursement of funds;

(5) establish and appropriate membership fees;

(6) approve all committee reports;

(7) appoint all students to represent ASSCW;

(8) provide for the Board of Publications;

(9) provide for the election of a Yell King;

(10) make, alter, or amend By-Laws for the Association by a two-thirds vote of the total voting membership of the Board of Control.

(11) supervise the management and activities of the Student Union Building;

(12) provide for all rules governing ASSCW and class elections; and

(13) have such other general control of the student interests and activities as may be assigned it by the Board of Regents of The State College of Washington.

“Section 7: Should a vacancy occur in any ASSCW office, the Board of Control shall appoint a successor, except as provided for in Article IX of this Constitution.

“Section 8: A majority of the voting membership of the Board of Control shall constitute a quorum for the transaction of any business except as provided for in Article V, Section 6, (10).

“Section 9: Members of the Board of Control shall assume office at the beginning of the fall term of each year and shall hold office for one year.

“Article VI—Administrative Advisor

“Section 1: The Administrative Advisor shall be appointed by the Board of Control with the advice and consent of the College Administration.

“Section 2: The Administrative Advisor’s salary shall be determined by the Board of Control and shall be paid from the funds of the ASSCW.

“Section 3: The Administrative Advisor shall be bonded for a sum that shall be determined by the Comptroller.

“Section 4: The powers and duties of the Administrative Advisor shall be determined by the Board of Control as set forth in the By-Laws.

“Section 5: The Administrative Advisor shall be a member of the administrative staff of The State College of Washington.

“Article VII—Meetings

“Section 1: The annual meeting of the Association shall be held in May of each year and one other meeting shall be held during the fall term.

“Section 2: Special meetings may be called at any time during the year by the President of the Association.

“Article VIII—Elections

“Section 1: Candidates for election shall be duly chosen at an open party caucus according to the By-Laws.

“Section 2: Elections shall be conducted accord-

ing to the Election Rules as provided in the By-Laws. These rules shall be published in the Evergreen at least one week preceding the party caucuses, and again one week preceding the election. These rules are subject to change by action of the Board of Control, provided that the rules shall not be changed between the publication preceding nominations and the election unless the change is directed by the President of the College.

“Section 3: All candidates shall be elected by a majority vote.

“Section 4: Parties without class representation on the Board of Control shall formulate their caucus in accordance with all applicable parts of this article, but they shall not be eligible to enter candidates for class representation.

“Section 5: This article shall not be construed as prohibiting additional party caucuses from entering on the ballot as sticker candidates the names of other candidates who meet scholastic and other requirements for the respective offices.

“Article IX—Repeal and Recall

“Section 1: Any act of an officer, committee, or organization existing under this Constitution, may be repealed or amended by a majority vote of the Association at a special election to be called by the Board of Control upon presentation of a written petition signed by one-fifth of all members of the Association.

“Section 2: Any officer of this Association may be recalled by a majority vote at a special election. The Board of Control shall, upon the presentation of a written petition, signed by one-fifth of all the members of the Association, call such a special election. In case of a recall, the office shall be filled by a special election called by the Board of Control within one week of the date of the recall.

“Article X—Seal

“Section 1: The Corporate Seal of this Association shall be in the form of a circle with the words ‘Associated Students of The State College of Washington’ in circumferential annulus, and the words ‘Corporate Seal’ in the center.

“Article XI—Amendments and Revisions

“Section 1: This Constitution may be amended or revised by a majority vote of ballots cast on the proposed modifications at any regular ASSCW election or special election called for that purpose.

“Section 2: Amendments and revisions shall be presented to the members of the Association in an election called by an affirmative vote of at least eight members of the Board of Control or upon petition of one-fifth of the members of the Association.

“Section 3: Amendments and revisions shall be presented to the Board of Control at least two weeks before election and shall be printed in full in the Evergreen one week before election day.

“Article XII—Body to Interpret the
Constitution and By-Laws

“Section 1: Should it be deemed necessary in the opinion of the Board of Control to have any section of the Constitution or By-Laws of this Association interpreted, upon the request of that body the President of the College shall appoint three members of the faculty, who shall meet with the President and one other member of the Board of Control of the ASSCW for the purpose of interpreting any section or sections in question. The decision of this body shall be conclusive and shall be filed with the copy of the official Constitution. It is understood that the Board of Control may request such an interpretation, either upon its own motion, or at the request of not less than ten (10) students who may petition the Board of Control requesting such action.”

PLAINTIFF'S EXHIBIT No. 6

Student Store Account

Reimbursed Items Paid by Associated Students of the State College of Washington
Expenditures From July 1, 1943, Through March 31, 1948

Ch. No.	Date	Name	Purpose	Voucher No.	Amount
221	1943				
	7/28	College Photography Studio			\$.93
	8/31	Ogden Beeman	Architect		333.00
	9/ 6	College Photography Studio			7.70
	10/ 1	Ogden Beeman	Architect		333.00
	18	Potlatch Yards, Inc.	Celotex		4.43
	11/ 1	Ogden Beeman	Architect		333.00
	4	College Photography Studio			33.34
	20	M. Eldora Damewood	Stenographer		11.25
	12/ 1	Ogden Beeman			333.00
	1944				
	12/31	Ogden Beeman			333.00
	1/ 7	Ass'n. of College Unions			5.00
	7	P. H. Holdsworth	Survey		183.28
	11	College Photography Studio			22.50
	11	College Photography Studio			10.55
	31	Ogden Beeman			333.00
	2/ 4	College Photography Studio			8.10
	21	Harry Weller	Drafting		96.00

Ch. No.	Date	Name	Purpose	Voucher No.	Amount
	3/ 1	Ogden Beeman	.....		333.00
	6	M. L. Maloney	.....Engineering Serv.		125.00
	6	Pullman Herald	.....12 copies		.62
	10	College Photography Studio	.....		23.70
	31	Two tickets to Lansing, Mich.	.....		302.98
	31	Ogden Beeman	.....		333.00
	4/ 7	Washington Hotel	.....Meals		10.42
	7	W. L. Maloney	.....Engineering Fee		200.00
	8	N. P.	.....Tickets to Mich.		12.82
	10	Registrar	.....Contact Prints		11.25
	12	College Photography Studio	.....		51.65
	5/ 1	Ogden Beeman	.....		333.00
	4	College Photography Studio	.....		9.10
	5	Travel Exp. to Mich.	.....		197.67
	10	Livingstone Elder	.....Architect Fee		481.80
	11	Harry C. Weller	.....Exp. to Mich.		31.15
	25	Hutchison Studio	.....		85.73
	31	Ogden Beeman	.....		333.00
	6/30	Ogden Beeman	.....		333.00
227	7/13	Porter Butts	.....Consultation Serv.	7924	75.00
	8/ 1	Ogden Beeman	.....July Salary	7948	333.00
	8/12	W. L. Maloney	.....Engineering Serv.	7981	100.00
	30	Roy E. Fredrick	.....Test. Found. Cond.	7983	207.50
	30	College Photography	.....Stu. Union Prints	7988	15.40

9/ 1	Glenn Wegner	Aug. Salary	7993	100.00
1	Ogden F. Beeman	Aug. Salary	7997	333.00
6	Porter Butts	Consulting Serv.	8012	50.00
15	W. L. Maloney	Consulting Serv.	8029	125.00
15	Dept. of Agriculture	Blue Prints	8031	18.50
15	WSC Registrar's Office	Contact Prints	8033	6.30
18	J. M. O'Donnell	Drafting Corporate Deed	8036	3.00
10/ 2	Glen W. Wegner	Sept. Salary	8065	250.00
2	Ogden F. Beeman	Sept. Salary	8071	333.00
5	Raymond L. Betts	Sept. Salary	8080	23.00
5	Dept. of Architecture	Blue Prints	8090	16.70
10	Student Book Corp.	Supplies	8099	41.04
31	Thomas L. Hansen	Oct. Salary	8159	333.33
31	Glen W. Wegner	Oct. Salary	8160	250.00
31	Philip E. Keene	Oct. Salary	8161	312.50
31	Ogden F. Beeman	Oct. Salary	8167	333.00
11/ 2	Raymond L. Betts	Oct. Salary	8174	53.50
7	Livingstone Elder	Consult. Service	8189	20.00
7	Students Book Corp.	Supplies	8195	68.32
7	In. Pacific Stamp Wks.	Stamps	8200	5.51
7	Dept. of Architecture	Blue Prints	8203	17.30
14	Livingstone Elder	Consult. Service	8216	20.00
12/ 1	Ogden F. Beeman	Nov. Salary	8248	333.00
1	Philip E. Keene	Nov. Salary	8254	312.50
1	Glenn W. Wegner	Nov. Salary	8255	250.00
1	Thomas L. Hansen	Nov. Salary	8256	333.33
4	Raymond L. Betts	Nov. Salary	8260	38.50

Ch. No.	Date	Name	Purpose	No. Voucher	Amount
6		Standard Paint Co.	Supplies	8292	22.46
6		Livingstone Elder	Consult. Service	8293	55.00
6		W. L. Maloney	Engineering Serv.	8298	200.00
6		Dept. of Architecture	Blue Prints	8299	20.75
6		Office of Registrar	Contact prints	8301	1.29
22		DeWitt Griffin & Associates	15% of total fee	8358	1800.00
29		Ogden F. Beeman	Dec. Salary	8372	333.00
29		Philip E. Keene	Dec. Salary	8377	312.50
29		Glenn W. Wegner	Dec. Salary	8378	250.00
29		Thomas L. Hansen	Dec. Salary	8379	333.33
31		Registrar's Office	Corr. on Voucher #	8301	5.13
1/11		Dept. of Architecture	Blue Prints	8509	19.40
11		Livingstone Elder	Services	8510	120.00
11		Students Book Store	Supplies	8514	26.86
31		In. Pacific Stamp Wks.	Supplies	8550	3.33
2/ 1		Thomas L. Hansen	Jan. Salary	8561	333.33
1		Glenn W. Wegner	Jan. Salary	8562	250.00
1		Philip E. Keene	Jan. Salary	8563	312.50
1		Ogden F. Beeman	Jan. Salary	8564	333.33
1		Robert Lamberger	Jan. Salary	8571	19.24
1		Raymond L. Betts	Jan. Salary	8572	17.75
8		W. L. Maloney	Consultant Eng.	8618	400.00
8		Registrar's Office	Contact Prints	8623	2.25
8		Dept. of Architecture	Blue Prints	8624	18.30

Ch.

No.

Date

Name

Purpose

Voucher

No. Amount

12	Student's Book Store	Supplies	8664	59.42
3/ 1	Thomas L. Hansen	Feb. Salary	8755	333.33
1	Glenn W. Wegner	Feb. Salary	8756	250.00
1	Philip E. Keene	Feb. Salary	8757	312.50
1	Ogden F. Beeman	Feb. Salary	8758	333.33
2	Raymond L. Betts	Feb. Salary	8767	37.00
2	Robert Lamberger	Feb. Salary	8768	193.80
21	Clyde M. Ludberg Co.	For estimating cost	8876	500.00
21	W. L. Maloney	Feb. Service	8877	225.00
21	Dept. of Architecture	Blue Prints	8880	18.35
23	Standard Print Co.	Blue Prints	8884	2.30
4/ 2	Thomas L. Hansen	Mar. Salary	8938	333.33
2	Glenn Wegner	Mar. Salary	8939	250.00
2	Philip E. Keene	Mar. Salary	8940	312.50
2	Ogden F. Beeman	Mar. Salary	8941	333.33
3	Standard Print Co.	Prints	8960	3.08
5	W. L. Maloney	Engineering Fee	8980	150.00
6	Robert Lamberger	Drafting	8986	192.38
9	Livingstone Elder	Consult. Serv. Fee	9014	25.00
10	ASSCW Change Account	Trav. Exp. to Seattle	9016	67.60
10	Students Book Store	Supplies	9019	20.93
13	Stanley A. Smith	Trav. Exp. to Calif.	9031	72.49
20	DeWitt & Griffin Associates	Eng. Services	9047	3790.00
20	Raymond L. Betts	Drafting Serv.	9049	15.00

20	Morell & Nichols Inc.	Landscape Eng.	9052	40.00
20	Dept. of Architecture	Blue Printing	9056	6.90
30	Mrs. Geo. Severance	Quitclaim	9079	15.00
5/1	Thomas L. Hansen	April Salary	9097	333.33
1	Glenn W. Wegner	April Salary	9098	250.00
1	Philip Keene	April Salary	9099	333.33
1	Ogden F. Beeman	April Salary	9100	333.33
3	Dept. of Architecture	April blue print.	9125	7.15
3	W. L. Maloney	Engineering Serv.	9127	175.00
3	Ray L. Betts	April wages	9112	10.00
3	Robert Lamberger	April wages	9114	185.25
7	Registrar's Office	Contact tracing	9146	.72
16	Whitman Title Co.	Limited Liability Report	9159	10.00
16	Standard Printing Co.	Prints	9173	9.85
6/1	Thomas L. Hansen	May Salary	9236	333.33
1	Glenn W. Wegner	May Salary	9237	250.00
1	Philip E. Keene	May Salary	9238	333.33
1	Ogden F. Beeman	May Salary	9239	333.33
4	Robert Lamberger	May Salary	9265	218.74
7	Raymond Betts	May Salary	9270	22.00
12	W. L. Maloney	May Eng. Fee	9344	175.00
18	Standard Printing Co.	Blue printing	9353	9.54
18	Pullman Branch Bank	Escrow Fee	9354	8.75
18	Registrar's Office	Contact printing	9356	20.97
30	Thomas L. Hansen	June Salary	9397	333.33
30	Glenn W. Wegner	June Salary	9398	250.00

Ch.

Ch.	Date	Name	Purpose	Voucher	
				No.	Amount
259	30	Philip E. Keene	June Salary	9399	333.33
	30	Ogden F. Beeman	June Salary	9400	333.33
	30	Robert Lamberger	June wages	9412	212.33
	1943		Less donation on Receipt #	4134	10.00
259	3/ 3	Washington State College	Prints	6561	2.79
	6/ 1	WSC Photo Shop	Prints	6773	.56
	5	Stanley Smith	Travel expenses	6801	42.30
	23	Stanley Smith	Travel expenses	6911	22.97
	7/ 1	Earl V. Foster	Travel expenses	6937	19.60
	1946				
	1/ 7	Dept. of Architecture	Prints	613	6.75
259	9	WSC	Nov. Arch. wages	620	972.26
	31	Assn. of College Unions	Membership	733	5.00
	3/ 7	W. L. Maloney	Engineering Fee	1097	375.00
	9	Morell & Nichols	Engineering Fee	1125	240.00
	21	Hutchison Studio	Display Material	1174	5.67
	4/ 1	W. L. Maloney	Engineering Fee	1241	475.00
	10	Whitman Co. Treas.	Tax on property	1325	154.57
	19	Dept. of Architecture	Prints	1352	33.15
	26	Earl V. Foster	Travel expense	1411	150.00
	30	Shaw & Borden Co.	Tracing cloth	1414	72.65
	5/ 2	WSC	Mar. Arch. wages	1448	926.71
	6/ 7	W. L. Maloney	Engineering Fee	1795	375.00

PLAINTIFF'S EXHIBIT No. 7

“Students Book Corporation
Pullman, Washington
Trust Agreement

“This Indenture, made and entered into at Pullman, Washington, this 1st day of March, 1947, by and between The Associated Students of the State College of Washington, a corporation, herein called ‘the grantor’ and the Board of Regents of the State College of Washington, herein called ‘the trustee,’ Witnesseth:

“Whereas, the Students Book Corporation was incorporated under the laws of the State of Washington in May, 1923, for the purpose of carrying on a general book, stationery, sporting goods, refreshment and mercantile business in Pullman, Washington, for service to the students of the State College of Washington, and,

“Whereas, all capital stock of said corporation is owned by the grantor corporation excepting single qualifying shares held by certain members of the grantor as determined by elections of the grantor’s membership, and,

“Whereas, the said Students Book Corporation has, since its inception, maintained and followed a policy of selling supplies, books, and other merchandise to the Students of the State College of Washington, at reasonable prices, and to provide other services without charge or at nominal cost to students of the State College of Washington, and,

“Whereas, the retained earnings of the Students Book Corporation have consistently, since its incep-

tion, been used for the purpose of expanding its physical assets to give better service to the Students of State College of Washington, and

“Whereas, earnings of the Students Book Corporation in excess of requirements for physical expansion and betterment have been invested in lands to be used solely for student purposes, which lands have been given to the State of Washington as a gift, and,

“Whereas, earnings and dividends over and above the uses aforesaid have been delivered to the Bursar of the State College of Washington by the grantor to be used solely for student purposes and particularly for the use of the Students of the State College of Washington, or title to which will be vested in the State of Washington, and,

“Whereas, it is the policy of the Board of Trustees of the Students Book Corporation to operate its business in the interest of and for the benefit of the State College of Washington, and to use all of its net income for such purposes, which policy has been consistent and uniform since the said month of May, 1923, and,

“Whereas, it is the desire of the grantor that this policy be perpetuated and that the operation of the Students Book Corporation be permanently for the benefit and betterment of and by Students of the State College of Washington.

“Now, Therefore, the grantor does hereby assign and set over unto the trustee all of the capital stock of the Students Book Corporation under the following terms and conditions, to wit:

“The trustee shall exercise all incidents of own-

ership of this capital stock for the welfare and best interest of the Students of the State College of Washington. During the existence of the grantor, the principal and interest earnings of this trust shall only upon recommendation of the Board of Control of the Associated Students of the State College of Washington be used only in furtherance of the purposes for which the Associated Students was organized.

“The trustee does hereby agree that it will comply with the condition of this trust and that it hereby recognizes the obligations and duties of this trust and that it shall hold said shares of stock under the terms hereof.

“No bond shall be required of this trustee nor shall it be required to render any accounting other than to keep complete and adequate records in the office of the Bursar of the State College of Washington pertaining to the income and receipts from this trust asset and of the expenditures thereof.

“In Witness Whereof . . .”

PLAINTIFF'S EXHIBIT No. 8

The Constitution (ASSCW)

Article 1—Name

Section 1. The name of this organization shall be the “Associated Students of the State College of Washington.”

Article II.—Membership

Section 1. All regularly enrolled undergraduate

students of the State College of Washington and Students of short courses who shall pay the fees hereinafter provided for and who abide by the Constitution and By-Laws of this Association, and the Graduate Manager shall be members of this organization.

Article III.—Officers

Section 1. The officers of this Association shall be a President, a Vice-President and a Secretary. The Bursar of the State College shall be ex-officio treasurer. They shall hold office for one school year.

Section 2. (As amended March 12, 1942) To be eligible to be elected to the office of President, Vice-President, Secretary, Senior Independent man, Senior Independent woman of this Association, a person must be a student who at the beginning of the year in which that person is to hold office shall have to his or her credit in the State College of Washington, at least ninety (90) hours and not more than one hundred and twenty-eight (128) hours earned here or elsewhere, and must have as many grade points as the number of credit hours in which he or she has been enrolled at this institution.

Section 3. The President shall preside at all meetings of this Association and all meetings of the Board of Control. He shall sign all documents, contracts, notes, bonds, mortgages, deeds, and leases as authorized by the Board of Control, and perform all other duties pertaining to that office.

Section 4. (As amended March 12, 1942) To be

eligible to be elected to the office of Junior Independent man, Junior Fraternity man, Junior Independent woman and Junior Sorority woman of the Association, a person must be a student who at the beginning of the year in which that person is to hold office, shall have to his or her credit in the State College of Washington, at least sixty (60) hours and not more than eighty-nine (89) hours earned here or elsewhere, and must have as many grade points as the number of credit hours in which he or she has been enrolled at this institution.

Section 5. The Vice-President shall assume and execute all the duties of the President in the absence or inability of that officer, and he shall automatically be Chairman of the Election Board. In case the office of President is at any time vacated, the Vice-President shall automatically become President for the unexpired term, and the Board of Control shall elect a temporary Vice-President, who shall occupy that office until his successor is elected.

Section 6. (As amended March 12, 1942) To be eligible to be elected to the office of Sophomore Independent representative or Sophomore Fraternity (Sorority) representative of this Association, a person must be a student, who at the beginning of the year in which that person is to hold office, shall have to his or her credit in the State College of Washington, at least thirty (30) hours and not more than fifty-nine (59) hours earned here or elsewhere, and must have as many grade points as the number of credit hours in which he has been enrolled at this institution.

Section 7. (As amended March 12, 1942) To be eligible to be elected to the offices of Senior Fraternity man, Senior Sorority woman, Junior Fraternity man, Junior Sorority woman or Sophomore Fraternity (Sorority) representative, a person must be a recognized member or pledge of a social Fraternity or Sorority. To be eligible to be elected to the offices of Senior Independent man, Senior Independent woman, Junior Independent man, Junior Independent woman and Sophomore Independent representative, a person must Not be a recognized member or pledge of a social Fraternity or Sorority. Any student elected to any of the offices enumerated in this section who changes his affiliation from Independent to Fraternity (Sorority) or vice-versa, during the term of office, is automatically dropped from office. In the event that the affiliation of a candidate is contested, any twenty-five (25) members of the Association may petition the Board of Control, within four (4) days after nomination, to determine whether or not that candidate is a recognized member or pledge of a social fraternity or sorority. If the affiliation of an officer named in this section is contested during his or her term of office, the status of that officer shall be determined by the Board of Control.

Section 8. (As amended) Scholastic hours for the purpose of determining eligibility to office shall be certified by the Registrar upon request from the Graduate Manager's office. Any student elected to any of the above offices who fails to meet these

scholastic requirements at the time of taking office is automatically dropped from office.

Section 9. Scholastic hours for the purpose of determining eligibility to office shall be certified by the Registrar.

Article IV.—Board of Control

Section 1. (As amended March 12, 1942) The Board of Trustees of this Association shall consist of sixteen (16) members to be known as the “Associated Students Board of Control.”

Section 2. (As amended March 12, 1942) The following shall be members of the Board of Control:

(a) The President, Vice President and Secretary of this Association.

(b) One senior Independent men’s representative and one senior Fraternity representative.

(c) One senior Independent women’s representative and one senior Sorority representative.

(d) One junior Independent men’s representative and one junior Fraternity representative.

(e) One junior Independent women’s representative and one junior Sorority representative.

(f) One Sophomore Independent representative and one sophomore Fraternity or Sorority representative.

(g) The Graduate Manager shall act as graduate representative by virtue of his office.

(h) The president of the Associated Women Students shall act as member ex-officio of the Board.

(i) A student representative from the Athletic Council appointed by the Athletic Council shall be a member ex-officio of the Board.

Section 3. It shall be the duty of the Board of Control to adopt or approve all budgets, and to audit all accounts. It shall have the general supervision of all affairs, property, and activities of this Association, award letters, select depositories for the Association's funds, have charge of the disbursements of all funds, establish membership fees, and appropriate the same, and shall have such other general control of the student interests and activities as may be assigned to it by the Board of Regents of the State College of Washington.

Section 4. Should a vacancy occur in the Board of Control, the President, with the approval of the Board, shall appoint someone to fill the vacancy. Should a vacancy occur in the Athletic Council the Board of Control, as soon as possible, appoint someone to fill the vacancy, which appointment shall be approved by the President of the State College before the appointee takes office.

Section 5. The Board of Control shall appoint one senior and three junior managers for football, baseball, basketball, and track. One senior shall be appointed as swimming manager, one as tennis manager and one as debate manager.

Section 6. A majority of the Board of Control shall constitute a quorum for the transaction of any business.

Article V.—Athletic Council

Section 1. The Athletic Council shall consist of the following members:

(a) The President of the State College, who shall be ex-officio Chairman of the Council and shall have power to absolute veto in all acts of the Council.

(b) Three (3) members of the faculty of the State College of Washington to be appointed by the President of the State College, one of whom shall be the Athletic Director.

(c) Three (3) members of the Alumni Association.

(d) Three (3) undergraduates, who shall be elected at the regular spring A.S.S.C.W. election.

Section 2. The personnel of the Athletic Council shall be approved by the President of the State College of Washington before entering upon any of its duties.

Section 3. No member of the Athletic Council shall vote by proxy except non-resident alumni, who may give proxy to some other member of the Council.

Section 4. The Athletic Council shall approve all athletic awards before recommending to the Board of Control.

Article VI.—Graduate Manager

Section 1. The Graduate Manager shall be appointed by the Board of Control with the advice and consent of the Athletic Council.

Section 2. The Graduate Manager shall be a graduate of the State College of Washington. His salary shall be determined by the Board of Control and shall be paid from the funds of the Association. The Graduate Manager shall be secretary of the Athletic Council and keep a record of all matters of the Council, receive reports from student managers, keep a record of all games and contests in which those representing the State College of Washington shall participate; keep a record of all contracts made by the State College of Washington with managers of other schools and when from any cause he ceases to be Manager, he shall turn over to the Secretary of the Association all records of his office.

Section 3. The Graduate Manager shall schedule all athletic contests subject to the approval of the Athletic Council and have full charge and control of all athletic meets connected with the College.

Section 4. The Graduate Manager shall authorize the sale of tickets for all activities requiring a sale.

Article VII.—Meetings

Section 1. The regular meetings of the Association shall be held once each month.

Section 2. The annual meeting of members of

the Association shall be held on the first Tuesday of May each year.

Section 3. Special meetings may be called at any time during the year by the President.

Article VIII.—Elections

Section 1. (As amended May 18, 1944) Candidates for elections shall be duly chosen at an open party caucus for each student party three weeks preceding elections.

Section 2. (As amended May 29, 1941) Any student, to be eligible as a candidate for an elective office in the Associated Students, must have as many grade points as the number of credit hours in which he has been enrolled at this institution. Following nominations of officers, the Graduate Manager's Office shall check the names of those nominated with the Registrar's Office. Candidates with less grade points than credit hours shall not have their names included on the ballot.

Section 3. (As amended May 29, 1941) Elections shall be conducted according to the election rules which shall be listed in the Supplementary Code of Regulations and kept on file in the office of the Graduate Manager. These rules shall be published in the *Evergreen* at least one week before the regular nomination meeting, and again in the issue of the *Evergreen* preceding the election. These rules are subject to change by action of the Board of Control, provided that the rules shall not be changed between the publication preceding nomi-

nation and the following election, unless by the President of the College.

Section 4. (As amended May 29, 1941) At the time and place of holding the election, the names of those placed in nomination shall be the candidates for the respective offices, and a majority vote of all members voting shall be necessary to elect. This section shall not be construed as prohibiting voters from entering on the ballot as sticker candidates the names of other candidates who meet scholastic and other requirements for the respective offices.

Section 5. (As amended May 29, 1941) The eligibility of the candidates for the various offices is governed by Sections 2, 4, 6, 7, 8 of Article III and Section 1 (d) and 2 of Article V in Constitution of the Association.

Section 6. (Addition of May 18, 1944) Each party shall have an open party caucus three weeks preceding elections to choose candidates for the elections.

Each dormitory, Fraternity and Sorority house shall have one voting representative elected from his or her group for each fifteen students living in, or affiliated with, the group, with a minimum of one representative.

Students not living in dormitories, Fraternity or Sorority houses, shall obtain representation in the same proportion through recognized off-campus organizations with which they are affiliated.

No student may obtain representation through more than one organization.

Student body class representatives of each party elected the previous year, shall preside at the caucus of their respective parties.

Elected representatives to the caucus may vote by proxy authorized by his or her group.

Section 7. (Addition of May 18, 1944) There shall be at least two candidates for election from each party for each class representative office.

Article IX.—Vacancies

Section 1. Any vacancy occurring in any office from any cause shall be filled by the Board of Control.

Article X.—Repeal and Recall

Section 1. Any act of an officer, committee, or organization existing under this Constitution, may be repealed or amended by a two-thirds vote of the members present at any regular meeting of the Association.

Section 2. Any officers of this Association may be recalled by a majority vote at a special election. The Board of Control shall, upon the presentation of a written petition, signed by one-third ($\frac{1}{3}$) of the members of the Association, call such a special election. In case of a recall, the office shall be filled by a special election called by the Board of Control within one week of the date of recall.

Article XI.—Seal

Section 1. The Corporate Seal of this Association shall be in the form of a circle with the words,

“Associated Students of the State College of Washington,” in the circumference, and the words, “Corporate Seal,” in the center.

Article XII.—Amendments

Section 1. This Constitution may be amended by a majority vote of ballots cast at any regular A.S.S.C.W. election or special election called for that purpose.

Section 2. Amendments shall be presented to the members of the Association by the affirmative vote of at least eight (8) members of the Board of Control, or upon petition of one-third ($\frac{1}{3}$) of the members of the Association.

Section 3. Amendments shall be proposed at least two weeks before election and shall be printed in full in the Evergreen one week before the election day.

Article XIII.—Body to Interpret the Constitution And By-Laws

Section 1. Should it be deemed necessary in the opinion of the Board of Control to have any section of the Constitution or By-Laws of this Association interpreted, upon request of that body, the President of the College shall appoint three members of the faculty, who shall meet with the President and Vice-President of the A.S.S.C.W. for the purpose of interpreting the section or sections in question. The decision of this body shall be conclusive and shall be filed with the copy of the official Constitution. It is understood that the Board of Control may request such an interpretation, either upon its own motion, or at the request of not less

than ten (10) students who may petition the Board of Control requesting such action.

The undersigned testifies that the foregoing copy of the A.S.S.C.W. Constitution is true and reliable as printed in the Evergreen in the Monday, January 13, 1947, issue.

/s/ JEANNE D. JOHNSON,
A.S.S.C.W. Administrative
Adviser.

May 26, 1950.

PLAINTIFF'S EXHIBIT No. 9
(Copy)

Amendments to Article II, By-Laws of Students
Book Corp.

Effective October 10, 1947

Section 1—Amended

The stockholders of this corporation shall be nine in number. Seven stockholders shall be appointed by the Board of Control of the Associated Students of the State College of Washington. One of the stockholders, the Business Manager of the State College of Washington, shall serve as an ex-officio member of the Students Book Corporation. The ninth stockholder shall be the Administrative Advisor. Each stockholder shall hold one share of stock. The Board of Regents of the State College of Washington shall hold all but nine shares of the total stock subscribed for and paid up. Each stockholder shall have one and only one vote irrespective

of the number of shares held. (Amended October 10, 1947.)

Section 2—Amended

Two of the stockholders shall be members of the faculty of the State College of Washington, teaching in some department of the College in Pullman. Five of the stockholders shall be undergraduate students enrolled in at least twelve collegiate hours. The five undergraduate student stockholders shall be appointed from among the three upper classes, in such a manner that there shall be a representative from each class, Sophomore, Junior, and Senior. One of the stockholders, the Business Manager of the State College of Washington, shall serve as an ex-officio member of the Students Book Corporation. The ninth stockholder shall be the Administrative Advisor. Provided that no other member of the Board of Control of the Associated Students except the Administrative Advisor shall be a stockholder in this corporation. (Amended October 10, 1947.)

PLAINTIFF'S EXHIBIT No. 10

The State College of Washington

Office of the President

Pullman, Washington

May 30, 1933

Mr. Ivan Putman

President, Board of Trustees

Student Book Corporation

Pullman, Washington

Dear Mr. Putman:

I was informed this morning that the proposed

amendment to the by-laws of the Associated Students relating to change in the method of control of the finances of the Student Book Corporation was defeated.

The members of the Board of Regents are held responsible by the Governor and the citizens of this state for the management not only of the institution but also of any groups, corporate or non-corporate, that have been organized in connection with the institution. I think that the great majority of the students appreciate the fact that the Board of Regents and executive officers of this institution could not escape this responsibility even if they cared to do so.

But just now there is one specific suggestion I should like to make to the Trustees of the Student Book Corporation and I am quite sure it will receive the unanimous approval of the Board. I would suggest that the Bursar of the college be made Treasurer of the Bookstore. The details of this matter should very properly be left with the Trustees themselves.

Very sincerely yours,

/s/ E. O. HOLLAND,
President.

eoh ls

PLAINTIFF'S EXHIBIT No. 11

The State College of Washington
Office of the President
Pullman, Washington

June 5, 1933

Carl A. Pettibone, Esq.
Manager, Student Book Corporation
Pullman, Washington

Dear Mr. Pettibone:

Your communication of the third instant enclosing minutes of the meeting of the stockholders and the Board of Trustees of the Student Book Corporation was received and I took the liberty last Saturday, June third, of reading the entire communication, including the minutes, to the Board of Regents. Fortunately all the members of the Board were in attendance at that time.

In the opinion of the members of the Board, the proposed amendment to your by-laws relative to submitting minutes of actions of the Board of Trustees to the President of the college for his approval is entirely satisfactory. The provision as to the five-day limit is a desirable one because the work of the Students Store should not be delayed from any neglect upon the part of the President's Office. Upon the other hand, the members of the Board of Regents are of the opinion that the recognition of the responsibility of the institution as represented by the Board of Regents and the President is properly safeguarded with the proposed amendment.

Therefore, I am happy to say that the members

of the Board of Regents and I are in full accord with your suggested amendment.

May I say in this connection that those student and faculty members who have carried the responsibility of the management of the Students Store for at least fifteen years—possibly longer—deserve the commendation not only of the Board of Regents but also of the public. As a consequence of this fine cooperation between the students and the faculty, and excellent management on the part of both, the assets of the Students Store are large, the management has been superior, and the services rendered have undoubtedly been very satisfactory.

I am glad that the Trustees of the Student Book Corporation and the Board of Regents are in full accord as to how a few additional safeguards will be helpful.

Very sincerely yours,

/s/ E. O. HOLLAND,

President.

eoh ls

PLAINTIFF'S EXHIBIT No. 12

ASSCW By-Laws

Article I—Authorities and Powers

Section 1: Authorities and powers of the Associated Students of The State College of Washington shall be exercised by the Board of Control or by its agents or agencies established under the Constitution or By-Laws. Actions of the Board of Control

or its agents or agencies shall not be valid, or in effect if disapproved by the President of the State College, but any such disapproval may be appealed by the Board of Control to the Board of Regents of The State College of Washington.

Article II—Dues and Memberships

Section 1: Regular membership dues shall be collected from each undergraduate student attending The State College of Washington. All regular and special dues shall be determined by the Board of Control with the approval of the Board of Regents.

Section 2: These regular dues shall entitle each member to full membership rights of the Association.

Section 3: Associated membership shall be granted to regularly enrolled graduate students upon payment of regular dues. Such membership shall grant the holder to all privileges of regular membership except the right to vote and hold office in the Association.

Article III—Committees

Section 1: The Board of Control shall appoint the student personnel of all the student and student-faculty committees which are necessary to plan and carry out the functions of the Association. The Board shall determine the number, the function, and the membership of these committees.

Section 2: All committees of the Associated Students of The State College of Washington must file

a complete and written report to the Board of Control within three weeks after the completion of their work unless the Board of Control should stipulate otherwise. These reports shall contain complete account of work undertaken and results obtained by the committee as a whole, and of each member of the committees where the work has been individual, as well as recommendations and suggestion for future similar committees.

Section 3: All reports shall be approved by the Board of Control and then placed in the permanent files in the General Manager's office.

Article IV—Students' Bookstore Board

Section 1: There shall be appointed a Students' Bookstore Board which shall consist of the General Manager, two faculty members, one senior student, one junior student, one sophomore student, and one student member-at-large.

Section 2: The student members of the Bookstore Board shall be appointed at the beginning of the school year by the Board of Control.

Section 3: The duties of the Board shall be to act as a Board of Trustees, according to the By-Laws of the Students' Bookstore Corporation.

Section 4: Vacancies on the Students' Bookstore Board shall be filled as they occur, in order that the appointments as stated in Section 1 may not be disturbed. Unless student members resign or are

guilty of gross neglect, they shall be reappointed from year to year.

Article V—Student Union Board

Section 1: There shall be appointed a Student Union Board which shall consist of the following members:

(1) one senior student, one junior student, one sophomore student, and one student member-at-large;

(2) three faculty members:

(3) the Union manager, one member of the administrative Student Personnel staff, the General Manager, and the Student Activities Counsellor, all of whom shall be non-voting members of the Board.

Section 2: The student members of the Student Union Board shall be appointed by the Board of Control at the beginning of each school year. Vacancies shall be filled as they occur, in order that the appointments as stated in Section 1 may not be disturbed. Unless student members resign or are guilty of gross neglect, they shall be reappointed from year to year.

Section 3: Faculty members and the Student Personnel member shall be appointed by the Board of Control with the approval of the President of the College. Faculty members shall serve for a three-year term. A new faculty member shall be ap-

pointed at the same time as the new sophomore student is appointed.

Section 4: Duties of the Student Union Board shall be:

(1) to be responsible for the preparation of a yearly budget for the Student Union Building which shall be subject to final approval by the Board of Control;

(2) to present each year an itemized statement of expenditures and income to the Board of Control;

(3) to determine all policies and activities concerning the Student Union Building and its management to the best interest of ASSCW, such policies being subject to the final approval of the Board of Control.

Article VI—The Athletic Council

Section 1: The Athletic Council shall consist of:

(1) the President of The State College of Washington, who shall be ex-officio chairman of the Council;

(2) three faculty members;

(3) three alumni members;

(4) three student members;

(5) the General Manager, who shall be ex-officio and non-voting secretary of the Council.

Section 2: The student members shall be ap-

pointed by the Board of Control immediately following the inauguration of new officers and shall include one sophomore student, one junior student, and one senior student. They shall hold office for not more than three years.

Section 3: Vacancies on the Athletic Council shall be filled as they occur, in order that the appointments as stated in Section 2 may not be disturbed. Unless student members resign or are guilty of gross neglect, they shall be reappointed from year to year.

Section 4: The personnel of the Athletic Council shall be approved by the President of The State College of Washington before entering upon any of its duties.

Section 5: All members shall be eligible to vote by proxy when not in residence.

Section 6: A two-thirds majority of the voting members of the Athletic Council shall constitute a quorum for the transaction of business.

Section 7: The Secretary of the Athletic Council shall keep a permanent record of all meetings of the Athletic Council and notify all members of meetings at least 24 hours prior to meeting time.

Section 8: Powers and duties of the Athletic Council shall be:

- (1) to approve all athletic awards before submitting them to the Board of Control for final approval;

- (2) to appoint a student representative, who

shall be ex-officio to the Board of Control, at the first regular meeting each year;

(3) to select the coaching staff;

(4) to recommend the coaching staff salary schedules to the Board of Control for final approval annually;

(5) to determine athletic policy for the Associated Students of The State College of Washington.

Article VII—Publications

Section 1: The official publications of the Associated Students shall be the Evergreen, the Chinook, and all other official printed material.

Section 2: There shall be a Board of Publications which shall consist of the President of the Associated Students, who shall act as chairman ex-officio, the Head of the Department of Journalism, the editors-in-chief and business managers of the Evergreen and Chinook, and the General Manager. The Director of Student Publications shall be non-voting, ex-officio secretary.

Section 3: The powers and duties of the Board of Publications shall be:

(1) to appoint the editors-in-chief, associate editors, managing editors, business managers, and assistant business managers for all publications of the Associated Students, and to submit these appointments to the Board of Control for approval;

(2) to recall from any office any persons holding the above appointive positions on any publication in event of unsatisfactory scholarship or gross neglect of duties on the publication. They shall be recalled by a 5/7 vote of the Board of Publications, and their recall shall be approved by the Board of Control;

(3) to appoint persons to fill any vacancies which might occur in the above appointive positions, and submit such appointments to the Board of Control for approval;

(4) to secure official verification from the College Registrar that each candidate and appointee meets the scholastic requirements of the College;

(5) to decide on the advisability of any new publications and submit a recommendation concerning such publications to the Board of Control.

Section 4: The Board of Publications shall draw up a Code of the Duties in which the relationships and responsibilities of the Board as a whole and of its various members shall be defined. There shall be an annual review of the Code, in May, by the outgoing Board.

Section 5: The editor-in-chief of each publication shall, at the beginning of his term of office, present statement of his operating policies to the Board of Publications for approval, and, if approved, he shall be obligated to follow these policies. Such

policies may be amended with the consent of the Board of Publications in order to meet unforeseen situations which may arise.

Section 6: In the advent of a stalemate between the Board of Control and the Board of Publications concerning any of the appointments described in Section 2, a joint meeting of the two Boards, for discussion of the problem, shall automatically follow.

Section 7: The Board of Publications shall meet once each month. Special meetings may be called by the chairman at the request of any member of the Board of Publications.

Section 8: Salaries of the editors-in-chief and business managers of all publications of the Associated Students shall be determined by the Board of Control.

Evergreen

Section 9: The Editor-in-Chief of the Evergreen shall be appointed to serve for one semester, but he shall be eligible for reappointment. Editors shall be selected in May of each year for the summer and fall semesters and in January for the spring semester. Appointees must have a working record of at least four semesters on the Evergreen and must have senior standing upon taking office.

Section 10: The Managing Editors shall be appointed to serve for one semester and shall have at least junior standing upon assuming office. Man-

aging Editors shall be selected in May and January of each year and shall have a working record of at least two semesters on the Evergreen.

Section 11: The Business Manager shall be appointed to serve for one school year and shall have senior standing upon assuming office. He shall be selected in May of each year and shall have a working record of at least four semesters on the Evergreen.

Section 12: Assistant Business Managers shall be appointed in May to serve for one year. They shall have at least junior standing and a working record of at least two semesters on the Evergreen upon assuming office.

Section 13: The lower editorial staff members of the Evergreen shall be appointed to their positions by the Editor-in-Chief of the Evergreen, who shall have the power of removal. The lower members of the business staff of the Evergreen shall be appointed by the Business Manager of the Evergreen, who shall have the power of removal.

Section 14: There shall be one Managing Editor and one Assistant Business Manager for each issue of the Evergreen published each week.

Section 15: The powers and duties of the Editor-in-Chief shall be:

- (1) to have general supervision of the publication of the Evergreen;
- (2) to preside at all meetings of the staff;

(3) to direct the editorial policy of the paper ;

(4) to recall from office any lower staff personnel in event of unsatisfactory scholarship or gross neglect of duties.

Section 16: The powers and duties of the Business Manager shall be:

(1) to have charge of the finances of the Evergreen ;

(2) to approve jointly, in writing, with the General Manager, all bills incurred by the Evergreen ;

(3) to collect all debts due the paper and turn this income over to the General Manager.

Section 17: A copy of the monthly financial statement of the Evergreen shall be filed in the office of the ASSCW president.

Chinook

Section 18: The Editor-in-Chief of the Chinook shall be appointed in May of each year. He shall have a working record of at least four semesters with the publications and shall have at least a junior standing when appointed.

Section 19: The Associate Editors of the Chinook shall be appointed in May of each year. They shall have a working record of at least two semesters with the publication and shall have at least sophomore standing when appointed.

Section 20: The Business Manager of the Chinook

shall be appointed in May of each year. He shall have a working record of at least four semesters with the publication and shall have at least a junior standing when appointed.

Section 21: The Assistant Business Managers shall be appointed in May of each year. They shall have a working record of at least two semesters with the publication and shall have at least sophomore standing when appointed.

Section 22: The lower editorial staff members of the Chinook shall be appointed to their positions by the Editor-in-Chief of the Chinook, who shall have the power of removal. Lower members of business staff of the Chinook shall be appointed by the Business Manager of the Chinook, who shall have the power of removal.

Section 23: the powers and duties of the Editor-in-Chief shall be:

- (1) to have general supervision of the publishing of the Chinook;

- (2) to preside at all meetings of the editorial staff;

- (3) to direct the editorial policy of the Chinook;

- (4) to aid in the proper training of Associate Editors.

Section 24: The powers and duties of the Business Manager shall be:

(1) to have charge of the finances of the Chinook;

(2) to approve jointly, in writing, with the General Manager, all bills incurred by the Chinook;

(3) to collect all debts due the Chinook and turn this income over to the General Manager.

Section 25: Each edition of the Chinook shall be known by the year in which it is published, beginning in 1926, i.e., "The Chinook of 1926."

Article VIII—Yell Leaders

Section 1: There shall be elected in the regular spring election of the Association a Yell King chosen from the Yell Dukes of the previous year. The Yell King may stand for re-election on an equal basis with the Yell Dukes. He shall have upperclass status and have at least a 2.00 grade average.

Section 2: Yell Dukes shall be selected from the Yell class in a competition conducted by the Board of Control following spring election. He shall have at least a 2.00 grade average.

Section 3: After registration for spring semester, the Yell King, with the help of the Yell Dukes, shall advertise a class in yell-leading tactics in which:

(1) all regularly enrolled students shall be eligible;

(2) the class shall meet at least twice a month at definitely stated times under the di-

rect supervision of the Yell King and the Yell Dukes;

(3) the curriculum shall consist of the study of definite yell-leading programs and of group psychology, the latter to come under the direction of a College instructor.

Article IX—Awards

Section 1: All awards of the Association shall be governed by the "Code of Awards" of the Supplementary Code of Regulations, which shall be kept on file in the Office of the Association.

Section 2: The Code of Awards shall be subject to change at any regular meeting of the Board of Control. Any student may make recommendations to the Board of Control regarding changes in the Code of Awards.

Article X—Student Managers

Section 1: An upperclass student manager shall be any student recommended by the General Manager and interested staff members, subject to the approval of the Board of Control, to perform the duties as prescribed by the General Manager in sports and other extracurricular activities excluding publications. All activities of these managers shall be governed by the Manager's Code. Appointments shall be for one school year.

Section 2: All student managers shall be under the direct supervision of the General Manager. All

athletic managers shall at all times work in close cooperation with the Director of Athletics and the coaching staff. Managers of other activities shall work in cooperation with the directors of those activities. The student managers shall each year prepare a report covering all events relating to their respective activity and submit these reports to the General Manager for permanent files.

DEFENDANT'S EXHIBIT A-1

Student Book Corporation
Balance Sheet and Operating Data, 1929 to 1949 Inclusive

Year Ended December 31	Total Assets	Current Assets	Accounts Receivable	Inventories	Fixed Assets	Current Liabilities	Net Worth	Sales	Net Profit Before Taxes	Net Profit After Taxes	Dividends Paid	Gross Profit	Enroll- ment (3)
(1) 1949.....	\$401,303.02	\$365,249.84	\$145,716.83	\$150,988.18	\$21,400.59	\$ 82,001.61	\$319,301.41	\$681,366.05	\$78,705.26	\$48,797.26	\$19,250.00	\$182,712.02	
1948.....	344,337.71	305,851.48	85,704.68	145,199.47	21,292.44	54,583.56	289,754.15	779,040.80	89,398.90	55,903.68	—0—	210,891.59	7,890
1947.....	417,899.10	380,411.68	167,265.77	200,509.18	22,312.20	184,048.63	233,850.47	741,373.68	73,601.11	46,014.45	—0—	203,513.38	7,279
1946.....	261,130.68	221,281.12	107,587.00	102,383.17	21,423.92	73,294.36	187,836.32	453,729.88	43,873.43	29,718.90	—0—	120,957.33	4,676
1945.....	175,090.44	95,807.10	16,482.74	50,566.54	16,944.96	16,951.38	156,139.06	220,797.36	22,566.42	16,876.45	46,200.00	63,502.99	2,430
1944.....	198,233.52	72,352.53	6,472.89	41,310.08	20,252.36	10,770.91	187,462.61	190,170.58	19,316.89	14,476.82	11,550.00	56,884.70	1,944
1943.....	215,722.26	95,774.73	5,248.21	40,594.50	23,422.44	31,186.47	184,535.79	272,605.46	36,325.56	17,479.62	7,700.00	77,637.50	4,126
1942.....	195,000.13	95,574.09	6,563.25	44,647.81	26,369.42	14,387.73	180,612.40	219,155.12	16,384.26	12,024.87	—0—	58,634.12	4,872
1941.....	169,686.15	70,458.72	7,974.25	41,386.57	30,147.82	8,383.39	161,302.76	203,628.00	13,009.91	10,359.63	9,240.00	52,682.21	5,081
1940.....	167,121.96	55,358.67	7,218.82	39,610.38	31,455.15	6,938.83	160,183.13	187,766.13	12,241.92	10,502.53	9,240.00	50,772.45	5,114
1939.....	165,319.96	50,042.89	5,919.65	40,293.45	32,160.31	6,399.36	158,920.60	178,718.83	12,477.36	10,953.68	—0—	48,944.78	4,884
1938.....	153,707.79	49,978.01	5,552.96	37,102.51	32,517.83	5,820.73	147,887.06	177,330.59	11,579.71	10,197.69	—0—	47,787.12	5,016
1937.....	142,432.67	44,818.19	4,109.42	34,805.73	35,122.76	4,629.10	137,808.57	177,498.61	12,490.52	11,286.02	7,700.00	47,839.33	4,701
1936.....	138,832.21	44,074.33	5,354.20	32,467.01	36,475.39	4,860.58	143,971.63	163,921.40	8,511.28	7,666.63	11,550.00	41,633.10	4,472
(2) 1935.....	153,538.53	44,507.01	3,486.65	30,348.88	39,926.78	4,153.15	139,385.38	150,682.75	10,446.72	9,020.47	—0—	41,801.60	4,230
(2) 1934.....	146,410.92	38,263.22	3,106.03	29,827.56	44,676.21	3,966.43	128,765.96	130,145.35	11,003.01	9,360.17	500.00	38,887.39	3,480
(2) 1933.....	132,186.90	42,374.34	2,109.40	29,454.34	45,020.93	3,315.46	128,871.44	103,256.68	5,331.68	4,598.57	442.10	31,127.14	4,021
(2) 1932.....	125,711.11	42,967.94	3,126.07	35,849.04	48,197.04	3,257.29	122,453.82	128,665.05	7,486.98	6,457.52	—0—	38,102.57	4,448
(2) 1931.....	120,445.89	35,556.95	2,733.76	32,100.99	51,982.77	3,979.05	116,466.84	165,590.20	10,972.16	10,015.50	—0—	48,069.46	4,170
(2) 1930.....	110,489.64	38,439.51	1,443.84	33,511.01	54,845.76	5,763.89	104,725.75	172,122.44	13,414.03	12,164.35	—0—	48,615.14	4,147
(2) 1929.....	93,332.96	36,528.99	1,572.79	32,671.02	43,223.24	2,105.17	91,227.79	152,260.05	10,345.00	9,337.05	—0—	40,356.48	3,488

Note: (1) Assets and liabilities are those at October 31, 1949; sales and other income data are for ten months ended October 31, 1949.

(2) Income taxes for the years 1929-1935 inclusive were paid in 1936. The amounts deducted in the years 1929-1935 inclusive are the amounts that were finally assessed by the Collector.

(3) Enrollment is that reported by the Registrar of the State College for the school year ended during the calendar year.

[Title of District Court and Cause.]

CLERK'S CERTIFICATE TO RECORD
ON APPEAL

I Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 11, as amended, of the United States Court of Appeals for the Ninth Circuit, and Rule 75(o) of the Federal Rules of Civil Procedure, as amended, I am transmitting herewith as the Record on Appeal in the above-entitled cause all of the original pleadings and papers on file and of record in said cause in my office at Tacoma, Washington, to wit:

1. Complaint
2. Summons with Marshal's Return of Service
3. Stipulation Extending Time to Answer
4. Answer
5. Stipulation of Facts (with Exhibits 1-7, inclusive, attached)
6. Affidavit of Service (of proposed Findings of Fact and Conclusions of Law and Judgment)
7. Findings of Fact and Conclusions of Law
8. Judgment

9. Memorandum of Costs and Disbursements

10. Affidavit of Service of copy of Memo of Costs

11. Notice of Taxation of Costs

12. Notice (defendant) of Appeal

13. Order Extending Time to November 29, 1950, to File and Docket Record on Appeal

14. Reporter's Transcript of Proceedings (trial)

15. Designation of Defendant-Appellant of Contents of Record on Appeal

I do further certify that as part of the Record on Appeal I am also transmitting herewith the following enumerated exhibits, offered in evidence in the trial of the above-entitled cause, to wit:

(Attached to Stipulation of Facts)

Plaintiff's Exhibit No. 1: Articles of Incorporation, Student Book Corporation

No. 2: By-Laws of Student Book Corporation

No. 3: Letter from Commissioner of Internal Revenue

No. 4: Articles of Incorporation, ASSCW

No. 5: Constitution of ASSCW

No. 6: List of Expenditures

No. 7: Trust Agreement

No. 8: Newspaper clipping of Constitution

No. 9: Copy of Amendments

No. 10: Letter, Holland to Putnam

No. 11: Letter, Holland to Pettibone

No. 12: Booklet (pages 134-142)

and Defendant's Exhibit No. A-1: Balance sheet and operating data, Students Book Corp.,

and that the aforesaid original pleadings and exhibits constitute the Record on Appeal from the Judgment of the said District Court, filed on July 12, 1950, and entered in the civil docket of said cause on said date.

In Witness Whereof I have hereunto set my hand and affixed the seal of said Court, in the City of Tacoma, in the Western District of Washington, this 25th day of November, 1950.

MILLARD P. THOMAS,
Clerk.

[Seal] By /s/ E. E. REDMAYNE,
Deputy.

[Endorsed]: No. 12756. United States Court of Appeals for the Ninth Circuit. Clark Squire, Collector of Internal Revenue, Appellant, vs. Students Book Corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Southern Division.

Filed November 27, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit
No. 12756

CLARK SQUIRE, Collector of Internal Revenue
for the District of Washington,

Appellant,

vs.

STUDENTS BOOK CORPORATION,

Appellee.

APPELLANT'S STATEMENT OF POINTS
AND DESIGNATION OF RECORD FOR
PRINTING

Now comes Clark Squire, Collector of Internal Revenue, appellant in the above-entitled case, and pursuant to subdivision 6, Rule 19 of the Rules of

the United States Court of Appeals for the Ninth Circuit, and states the points on which he intends to rely, as follows:

1. The District Court erred in making the following Finding of Fact:

XII.

The activities of the plaintiff have at all times been integrated and coordinated with those of the ASSCW and the State College and plaintiff is the alter ego of the ASSCW and at all times material hereto was organized and existed for the purpose of carrying out the objectives of the ASSCW which were incident and auxiliary to the educational purpose of the State College of Washington.

* * *

2. The District Court erred in rendering the following Conclusions of Law:

I.

Plaintiff was during the years 1943 to 1947, inclusive, a corporation organized and operated exclusively for an educational purpose and no part of its net earnings inured to the benefit of any private individual or shareholder and no substantial part of its activities was in carrying on propaganda or otherwise attempting to influence legislation.

II.

During the years 1943 to 1947, inclusive, plaintiff was entitled to be exempt from corporate income tax, capital stock tax, excess profits tax, and corporate declared value excess profits tax.

III.

Plaintiff is entitled to recover from the defendant taxes paid for the years 1943 to 1947, inclusive, in the sum of \$71,933.15 with interest thereon at the rate of 6% per annum as provided in the United States Code, Title 26, Section 3771 and plaintiff's costs and disbursements incurred herein.

With the foregoing statement, the appellant designates as necessary for the consideration of this appeal all that portion of the original papers of record in this cause heretofore transmitted by the Clerk of the District Court to the United States Court of Appeals for the Ninth Circuit material in consideration of this case, the contents of which transmitted portion are as follows:

1. Complaint.
2. Answer.
3. Stipulation of Facts (not including exhibits hereinafter included as plaintiff's Exhibits 1 to 7, inc.).
4. Findings of Fact.
5. Judgment.
6. Notice of Appeal.
7. Order Extending Time to file record.
8. Reporter's Transcript of Proceedings (trial).
9. Designation of Defendant-Appellant of Contents of Record on Appeal.
10. Plaintiff's Exhibits as follows:

No. 1. Articles of Incorporation, as amended.

No. 2. By-Laws.

No. 3. Letter from Com. of Int. Rev.

No. 4. Articles of Incorporation filed 7/10/28, Sec. State.

No. 5. Constitution of ASSCW.

No. 6. List of Expenditures by ASSCW.

No. 7. Trust Agreement.

No. 8. Newspaper Clipping of Constitution.

No. 9. Copy of Amendments.

No. 10. Letter, Holland to Putnam.

No. 11. Letter, Holland to Pettibone.

No. 12. Booklet (pages 134-142).

11. Defendant's Exhibit.

A.1. Balance Sheet and Operating Data, Students Book Corporation.

12. Appellant's Statement of Points and Designation of Record for Printing, with proof of service.

Dated this 29th day of November, 1950.

/s/ J. CHARLES DENNIS,
United States Attorney.

/s/ GUY A. B. DOVELL,
Assistant United States
Attorney.

[Title of Court of Appeals and Cause.]

AFFIDAVIT OF MAILING

Daisy Bryant, being first duly sworn, on oath deposes and says:

That she is a citizen of the United States, and a resident of Tacoma, Washington, an employee of the Justice Department, over the age of 21 years, and not a party to the above-entitled action.

That on the 29th day of November, 1950, she served a copy of the attached Appellants' Statement of Points and Designation of Record for Printing upon appellee's attorneys of record, Smith Troy, Attorney General of the State of Washington, and Lyle L. Iversen, Assistant Attorney General of said state, by mailing a true copy of said Statement and Designation properly enclosed in a sealed franked envelope not requiring postage, directed to Smith Troy, Attorney General, and Lyle L. Iversen, Assistant Attorney General, Temple of Justice, Capitol Grounds, Olympia, Washington, their official address, and deposited in the United States Post Office at Tacoma, Washington.

/s/ DAISY BRYANT.

Subscribed and Sworn to before me this 29th day of November, 1950.

[Seal] /s/ G. A. B. DOVELL,
Notary Public in and for the State of Washington,
Residing at Tacoma.

[Endorsed]: Filed Dec. 1, 1950.